United Nations A/66/287

General Assembly

Distr.: General
9 August 2011

Original: English

Sixty-sixth session
Item 19 (a) of the provisional agenda*
Sustainable development

Implementation of Agenda 21, the Programme for the Further Implementation of Agenda 21 and the outcomes of the World Summit on Sustainable Development

Report of the Secretary-General

Summary

The present report, submitted pursuant to General Assembly resolution 65/152, provides an update on the implementation of Agenda 21 and the Plan of Implementation of the World Summit on Sustainable Development, together with actions taken by Governments, organizations of the United Nations system and major groups, in advancing the implementation of sustainable development goals and targets, including through partnerships for sustainable development. The report also includes the progress of the preparations for the United Nations Conference on Sustainable Development.

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11-44861 (E) 120911

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I. Introduction

1. The present report provides information on the progress made in implementing General Assembly resolution 65/152. The resolution called for the effective implementation of the commitments, programmes and time-bound targets adopted at the World Summit on Sustainable Development and the fulfilment of provisions relating to means of implementation, as contained in the Johannesburg Plan of Implementation. The resolution reiterated that the Commission on Sustainable Development is the high-level body responsible for sustainable development within the United Nations system and a forum for the consideration of issues related to the integration of the three dimensions of sustainable development.

2. The report comes in the middle of the preparatory process for the United Nations Conference on Sustainable Development, and at a time when the Commission on Sustainable Development failed to reach a conclusion largely because of the lack of consensus on repeating past agreements pertaining to the means of implementation.

3. This report should be read in conjunction with other reports submitted under the agenda item on sustainable development.

II. Overview

4. Last year's report[1] emphasized the broad and multidimensional nature of sustainable development, integrating and balancing the three dimensions — economic, social and environmental — as well as serving as a bridge between developed and developing countries, among Governments, business and civil society, and between present and future generations.

5. The present report elaborates further on how to promote closer convergence among the three pillars of sustainable development.

6. The Rio Principles[2] provide a systematic framework for international cooperation on sustainable development, including commitments to human welfare, national sovereignty, right to development, environmental protection, poverty eradication, protection of the vulnerable, and common but differentiated responsibilities, and sustainable consumption and production. These principles provide the foundation for subsequent agreements, including those to be reached at the United Nations Conference on Sustainable Development.

7. The challenges to sustainable development come from three sources. First, despite the progress made towards achieving the Millennium Development Goals, the goal of poverty eradication is still elusive. Second, the adverse impacts on nature and natural resources have reached alarming levels. Third, international commitment to affirming and implementing past decisions will be needed. Poverty eradication is associated with rapid economic growth and industrialization, which, in the absence of access to new technologies and financial resources, will require natural resources; and this can place stresses on an environment already heavily

[1] A/65/298.

[2] *Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 June 1992, vol. I, Resolutions Adopted by the Conference* (United Nations publication, Sales No. E.93.I.8 and corrigendum), resolution 1, annex I.

stressed by the prior development and current consumption patterns of high-income countries. Thus, a shift towards sustainable consumption and production patterns, led by the high-income countries, must go hand-in-hand with sustainable development of low-income countries.

8. Nonetheless, analyses suggest that the momentum towards an unsustainable future can be reversed. This change of direction will require a combination of factors, including access to technology and finance by poor countries, development and deployment of advanced technologies, enhanced access to energy services, shifts in lifestyles and values, and consistent political commitment. It takes many decades to realign human activity with a healthy environment, to make poverty obsolete, and to ameliorate the deep fissures that divide people. This realignment requires thus a long-term political commitment.

9. Climate change is already a reality. It has begun to place stress on ecological systems, water resources, and food security, and has contributed to an increased frequency of natural disasters. Such stresses may persist, and may lead to the loss of lives and property. A planetary transition towards a humane, just and ecological future[3] will require sustainable economic growth through greening of the economy, increased investment in green infrastructure, strengthening of the social pillar and creation of greener jobs, and unprecedented levels of international cooperation.

10. A key element of this agenda is the enhanced access to sustainable, modern, affordable energy services by poor countries. Energy is critical not only for economic growth and industrial development, but also for each of the Millennium Development Goals, and for reducing the pressure on natural resources.

11. The core idea is not only to integrate and combine environment and development in a synergistic manner, but also to effectively mainstream sustainability considerations into economic and developmental decision-making, and indeed to ensure that all development actions are approached through the prism of sustainability. In return, investing in the environment, such as in protecting, restoring and replenishing the assets provided by nature, could act as an important driver for future economic prosperity.

12. Member States, United Nations system entities and other stakeholders have identified a number of priority sectors that the United Nations Conference on Sustainable Development should address and on which the Conference should ideally yield decisions and initiatives. Several of these are discussed in section III of the report.

III. Priority sectors and cross-cutting issues

Energy[4]

13. The year 2012 has been proclaimed the International Year of Sustainable Energy for All,[5] emphasizing the importance of energy access for all to sustainable development and poverty eradication, as well as of protection of the environment

[3] Paul Raskin, Tariq Banuri, Gilberto Gallopin, Pablo Gutman, Al Hammond, Robert Kates, Rob Swart, *Great Transition: The Promise and Lure of the Times Ahead*, a report of the Global Scenario Group, Stockholm Environment Institute (2002).

[4] See A/66/306.

[5] See resolution 65/151.

through the sustainable use of traditional energy resources, cleaner technologies and newer energy sources.[6]

14. Current energy systems are inadequate to meet the needs of the world's poor and are jeopardizing the achievement of the Millennium Development Goals. Worldwide, the "energy-poor" suffer the health consequences of inefficient combustion of solid fuels in inadequately ventilated buildings, as well as the economic consequences of insufficient power for productive income-generating activities and for other basic services such as health and education. Women and girls in the developing world are disproportionately affected in this regard.[7]

15. Despite two decades of climate change policies, thousands of programmes, initiatives, regulations, market-based instruments and international agreements, and the disbursement of hundreds of billions of dollars in subsidies, funds, research and research and development efforts, and development aid, the declared goal of establishing a renewable low-carbon energy system on a global scale remains elusive.

16. It is estimated that government support worldwide for both electricity from renewables and for biofuels will be $205 billion, or 0.17 per cent of global gross domestic product (GDP), by 2035. Between 2010 and 2035, 35 per cent will go to renewables-based electricity, while global biofuel use will increase from 1 million barrels per day today to 4.4 million barrels per day in 2035, with the United States, the European Union and Brazil expected to remain the largest producers and consumers of biofuels.[8]

17. The growth rates for the diffusion of renewable energy technologies since 2000 have been impressive but are still insufficient. In 2005, fossil fuels accounted for 85 per cent of the global primary energy mix, while low-carbon nuclear power accounted for 6 per cent, hydroelectricity for 3 per cent and biomass for 4 per cent. Modern renewables jointly accounted for less than 1 per cent.[9] Similarly, the renascence of nuclear power has barely made up for losses of older capacities that are increasingly being phased out.[9] The current trajectory is nowhere near attaining a realistic path towards complete decarbonization of the global energy system by 2050.

18. Simplistic solutions dominate present national and global debates on how to meet the energy technology innovation imperative. Technology optimists suggest "big push" policies to scale up available technologies. Others focus on market incentives and hope that the necessary technological transformation will come about by "getting prices right" through internalizing environmental externalities.

19. The United Nations Conference on Sustainable Development has the opportunity to bring all this together in a common effort to transform the global energy system over the coming decades, by (a) expanding access to clean energy; (b) enhancing industrial energy efficiency; and (c) promoting green industry as an

[6] See www.sustainableenergyforall.org/.

[7] "Energy for a Sustainable Future", the Secretary-General's Advisory Group on Energy and Climate Change, summary report and recommendations, 28 April 2010, New York.

[8] *World Energy Outlook 2010*, Organization for Economic Cooperation and Development/ International Energy Agency (2010).

[9] *World Economic and Social Survey 2011*, United Nations publication, Sales No. E.11.II.C.1 (2011).

integral component of the transition to a green economy in the context of sustainable development and poverty eradication. The Conference can be an opportunity to ask the global community to set very concrete targets conducive to this energy transformation.

20. Timescales for this transition to sustainable energy need to be realistic and feasible. By 2030, there is an opportunity for the world to be well on its way to a fundamental transformation of its energy system, allowing developing countries to leapfrog current systems and shift to cleaner, sustainable, affordable and reliable energy services.[7] The international community can also be asked to provide by 2030 universal access to modern energy services, thus widening access for the 2 to 3 billion people excluded from modern energy services to a basic minimum threshold of modern energy services for both consumption and productive uses. The Conference can also promote the use of renewable energy to be 30 per cent of all global energy use by 2030. This will play a central role in securing a more reliable and sustainable energy path. The Conference can also spearhead the reduction of global energy intensity[10] by 40 per cent by 2030. By 2050, it is feasible to transform the global energy system into an almost carbon-free one (see figure 1).[9]

21. Attaining these goals will require unprecedented and worldwide coordinated measures, including major shifts in regulatory regimes in almost every economy, vast incremental infrastructure investments (likely to be more than $1 trillion annually),[9] accelerated development and deployment of multiple new energy technologies, and a fundamental behavioural shift in energy consumption. Major shifts in human and institutional capacity and governance will also be required.

22. Globally, the replacement cost of the existing fossil fuel and nuclear power infrastructure is at least $15 trillion to $20 trillion. Clearly, it is unlikely that the world will decide overnight to write off $15 trillion to $20 trillion in infrastructure and replace it with a renewable energy system having an even higher price tag. At the same time, it should be noted that the long-term incentive to change the existing energy system should be powerful, too, particularly in view of the fact that oil importers spent about $2 trillion to buy crude oil in 2007.[9]

[10] Energy intensity is measured by the quantity of energy per unit of economic activity or output (GDP).

Figure 1
Renewable energy plans for the world

	MacKay (2008)			Rathi and others (forthcoming)
Renewable source	*Technical potential (EJ)*	*Technical potential per capita (GJ)*	*Comments and assumptions*	*Techno-economic potential for Global Energy Assessment scenarios by 2050*
Wind	189	27.4	Onshore and offshore. Estimate of Greenpeace and the European Wind Energy Association	170
Hydro	28.8	4.11	Estimate by the International Hydropower Association and the International Energy Agency	28
Tide	1.2 2.6	0.18 0.37		
Wave	3.9	0.57	10 per cent of raw wave power converted at 50 per cent efficiency	
Geothermal	63.1	9.14	Extrapolation of United States geothermal potential for the world	17
Biofuels	284	41	All of the world's arable or cropland (27 million km²) used for biofuels! Power density of 0.5 W/m², and losses of 33 per cent in processing and farming	117+28
Total non-solar	**571**	**83**	Sum of the above	**360**
Solar photovoltaics (PV)				1 650
Concentrating solar power (CSP)	-	-		990
Total solar: solar heaters, PV and CSP	**370 EJ**	**>54**	One billion people in Europe and North Africa could be sustained by country size solar power facilities in deserts near the Mediterranean; and half a billion in North America could be sustained by Arizona-size facilities in the deserts of the United States and Mexico	**2 640**

Note: Data converted and adjusted for the world population of 6.9 billion in 2010.
Source: *World Economic and Social Survey 2011* (2011).

23. Both the international community and governments need to make renewables cost-competitive with other energy sources and technologies, and to stimulate technological advances.

24. All countries have a role to play: the high-income countries can contribute by making this goal a development assistance priority and catalysing financing; the middle-income countries can contribute by sharing relevant expertise, experience and replicable good practices; and the low-income countries can help create the right local institutional, regulatory and policy environment for investments to be made, including by the private sector. Policymakers and business leaders must place much greater emphasis on transforming the performance of national and regional energy systems over the coming decades. The United Nations Conference on Sustainable Development would also be a good opportunity to find strategies and solutions, including the role of the public sector and international cooperation.

25. Developing countries in particular need to expand access to reliable and modern energy services if they are to reduce poverty and improve the health of their citizens, while at the same time increasing productivity, enhancing competitiveness and promoting economic growth.

26. Developed and developing countries alike need to build and strengthen their capacity to implement effective policies, market-based mechanisms, business models, investment tools and regulations with regard to energy use. Achieving this goal will require the international community to harmonize technical standards for key energy-consuming products and equipment, to accelerate the transfer of know-how and good practices, and to catalyse increased private capital flows into investments in energy efficiency. The successful adoption of these measures would reduce global energy intensity by about 2.5 per cent per year — approximately double the historic rate.[7]

27. In this context, energy is a strong amplifier of sustainable development and a necessary element of a transition to a green economy. This requires a long-term approach towards energy security. Better-focused and greater efforts to move to cleaner and renewable energy will be needed to ensure climate stabilization while allowing developing countries to satisfy their rapidly increasing demand for commercial energy, which is linked to their development aspirations. Global and national energy policy is also development policy and thus must demonstrate special consideration of the poor. Optimal policy packages depend strongly on a country's institutions, development stage, resource endowments and socio-political preferences, and will change over time.

28. Establishing an international initiative to develop road maps for innovative technologies and for cooperating on existing and new partnerships, including carbon capture and storage, and other advanced energy technologies, can be one way to develop, deploy and foster clean energy technologies, encouraging a wide range of policy instruments such as transparent regulatory frameworks, economic and fiscal incentives, and public/private partnerships to foster private sector investments in new technologies.

29. The transformation of energy systems could be uneven and, if poorly handled, could lead to a widening "energy gap" between advanced and least developed nations, and even to periodic energy security crises. But handled well, through a balanced framework of cooperation and competition, energy system transformation has the potential to be a source of sustainable wealth creation for the world's growing population while reducing the strain on its resources and climate.

Water

30. Water is essential for achieving sustainable development and the Millennium Development Goals. Properly managing water resources is an essential component of growth, social and economic development, poverty reduction and equity, and sustainable environmental services.

31. As there are many competing demands on water, investment in water infrastructure and better management of water are key to meet all needs, particularly in rural areas and to enhance agricultural productivity. As development proceeds, with the shift to commercial and industrial activities in urban areas, water has to be managed for energy and food production, transportation, flood control, and drinking water and sanitation, as well as for industrial and commercial activities.

32. These needs are not always recognized. Usually water is mostly talked about in the context of safe drinking water and sanitation. These are important issues as 2.6 billion people do not use improved sanitation, while 884 million people do not

use improved sources for drinking water.[11] It also needs to be recognized that there is an urgent need to address the inherent interrelationship between water and other important development-related sectors, like energy, food, and the environment.

33. Decision-making on water requires seeking synergies and selecting appropriate trade-offs. It also requires distinguishing between short-term "fire-fighting" — responding to the urgent issues of the day — and long-term strategic development. Developing multipurpose water schemes and reusing water wherever feasible can lessen the need for trade-offs by enabling the same volumes of scarce water to deliver multiple outcomes.

34. A new dialogue between developed countries and developing countries on water management and its role in sustainable development is urgently needed. Countries should work together to identify socio-economic priorities and to invest in and use water to power the engines of growth, so that instead of competing demands on water, they will become complementary.

35. The challenges are great, but the unsustainable management and inequitable access to water resources cannot continue because the risks of inaction are even greater and can jeopardize achievements in other sectors of sustainable development. Leaders inside and outside the water domain have critical, complementary roles. Leaders in the water domain can inform the processes outside this domain and manage water resources to achieve agreed socio-economic and environmental objectives. But leaders in government, the private sector and civil society determine the direction that actions will take. The international community can provide a platform where this integrated approach to water is recognized and commitments are undertaken in its support. The United Nations Conference on Sustainable Development can be such a platform.

Food security and sustainable agriculture[12]

36. From 2007 to 2009, a food price hike followed by the financial crisis and global economic recession pushed the number of hungry and undernourished people in the world to unprecedented levels, reaching a peak in 2009 of more than 1 billion. In the first half of 2010, world agricultural commodity markets appeared to enter calmer times, and the Food and Agriculture Organization of the United Nations (FAO) estimated that the number of undernourished would decline to about 925 million with falling food prices.

37. But food prices began to rise again from the later half of 2010. The FAO Food Price Index hit its all time high of 238 points in February 2011. It averaged 234 points in June, 39 per cent higher than in June 2010. The FAO Cereal Price Index averaged 259 points in June, 71 per cent higher than in June 2010.[13] According to the World Bank, without action to increase the supply of food, 10 million more people could fall below the $1.25 a day extreme poverty line in addition to the 44 million pushed into poverty by soaring food prices during 2010.[14]

[11] *Progress on Sanitation and Drinking-Water, 2010 Update*, World Health Organization/United Nations Children's Fund (2010).

[12] See A/66/277.

[13] See "World Food Situation: FAO Food Price Index", Food and Agriculture Organization of the United Nations. Available at www.fao.org/worldfoodsituation/wfs-home/foodpricesindex/en/.

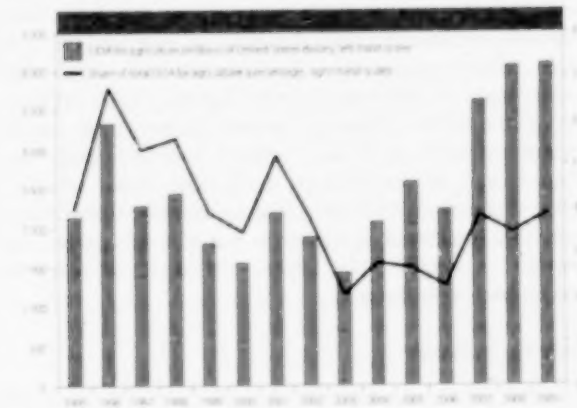
[14] See World Bank, "High and Volatile Food Prices Continue to Threaten the World's Poor", press release No. 2011/430/PREM (14 April 2011). Available at web.worldbank.org.

The 22 countries regarded as facing a "protracted food security crisis" are home to over 165 million undernourished people (about 20 per cent of the world's total population).[14]

38. This shows the importance of investment in agriculture, especially sustainable agriculture, as current agricultural technology, practices and land-use patterns cannot achieve an increase in food production between 70 and 100 per cent by 2050 to feed a growing population without further contributing to greenhouse gas emissions, water pollution and land degradation.[9]

39. However, the share of total official development assistance (ODA) allocated to agriculture fell from a peak of 18 per cent in 1978 to 4 per cent in 2009, with ODA earmarked for agriculture having decreased significantly in the 1990s (see figure 2).

Figure 2
Total volume and share of ODA allocated to agriculture, 1995-2009



Source: World Economic and Social Survey 2011 (2011).

40. One major consequence of unsustainable agriculture is increased land degradation in severity and extent, in many parts of the world, with about 40 per cent of the world's land surface degraded (25 per cent has been degraded over the past quarter-century alone) and with an estimated 1.5 billion people directly dependent on agriculture[9] (see figure 3). Land degradation has negative effects on climate, biodiversity, water ecosystems, landscape and other ecosystem services.

41. While agriculture contributes significantly to the problem of climate change, it is also vulnerable to its effects. Climate change impacts agriculture in many ways, with changes in temperature, precipitation and climatic variability affecting the timing and length of growing seasons and yields and thereby exacerbating land degradation and contributing to water scarcity (see figure 4).

Figure 3
Global environmental impacts of land degradation

Environmental component or process	*Bases of impact of land degradation*
Climate change	• Land-use change, deforestation in particular, is a critical factor in the global carbon cycle • Soil management changes can result in the sequestration of atmospheric carbon • Agriculture is a major source of methane (CH_4) and nitrous oxide (N_2O) emissions • Land surface change (for example, as regards albedo and roughness) plays an important role in regional and global climate change • Human activities accelerate the occurrence of sandstorms • Biomass burning contributes to climate change
Biodiversity	• Deforestation leads to loss of habitat and species • Land-use change and management, including fragmentation and burning, lead to loss of habitat and biodiversity • Non-point pollution from crop production damages aquatic habitats and biodiversity
Water resources	• Agricultural activities are a major source of water pollution • Land-use and cover change alters the global hydrologic cycle • Atmospheric deposition of soil dust damages coral reefs
Persistent organic pollutants (POPs)	• Soil contains a major pool of POPs • Biomass burning produces POPs

Source: *World Economic and Social Survey 2011* (2011).

Figure 4
Projections of climatic changes and corresponding impacts on agriculture

Projected change	*Likelihood of future trends based on projections for the twenty-first century*	*Projected impacts on agriculture*
Warmer and fewer cold days and nights; warmer and more frequent hot days and nights over most land areas	Virtually certain	Increased yields in colder environments; decreased yields in warmer environments
Warm spells/heatwaves: frequency increases over most land areas	Very likely	Reduced yields in warmer regions due to heat stress at key development stages; increased danger of wildfire
Heavy precipitation events: frequency increases over most areas	Very likely	Damage to crops; soil erosion, inability to cultivate land due to water-logging of soils
Area affected by drought increases	Likely	Land degradation; lower yields/crop damage and failure; increased livestock deaths; increased risk of wildfire
Intense tropical cyclone activity increases	Likely	Damage to crops; windthrow of trees
Increased incidence of extreme high sea level	Likely	Salinization of irrigation and well water

Source: Intergovernmental Panel on Climate Change 2007a, table 3.2., *Climate Change 2007: The Physical Science Basis*. Contribution of Working Group I to the Fourth Assessment Report of IPCC.

42. The productivity of some lands has declined by 50 per cent owing to soil erosion and desertification. Globally, the annual loss of 75 billion tons of soil costs about $400 billion per year, or approximately $70 per person per year. Nutrient (nitrogen, phosphorus and potassium) depletion also has a severe global economic impact.

43. Deforestation can also exacerbate food insecurity, as forests provide food, inputs and services that support crop and livestock production.[9] This is why one of the most significant developments in the combating deforestation agenda since Agenda 21 has been the emergence of the reducing emissions from deforestation and forest degradation (REDD) concept. REDD seeks to address the drivers of deforestation and develop a greater appreciation of the crucial role forests play in climate change adaption and mitigation. However, its integration into the United Nations Framework Convention on Climate Change (UNFCCC) has proved complex, taking a two-year process of deliberations for the Conference of the Parties to adopt a decision on the issue.[15]

[15] See http://unfccc.int/methods_science/redd/items/4547.php.

44. In this regard, despite the creation of a specific United Nations REDD initiative, launched in 2008 to assist developing countries prepare and implement REDD-plus strategies, the funding, organization and implementation of a fully operational international REDD mechanism continues to be negotiated under the UNFCCC. Nonetheless, REDD-plus programmes have begun to have significant impacts in several countries. In addition to the committed $1 billion contribution to a joint fund, a total of $3.5 billion for REDD for the period 2010-2012 has been pledged.[16]

45. There is often a strong association between the distribution of poor people reliant on agriculture and fragile environments. Poor people are likely to be farming steeper land and drier, less fertile soils and in more remote areas. Natural resource degradation may also exacerbate gender inequalities by increasing the time required for fulfilment of female responsibilities such as food production, fuelwood collection, and soil and water conservation.

46. Agricultural production systems can further adversely affect human health. Water pollution from inorganic fertilizers and livestock waste undermines the safety of drinking water and aquatic food. Pesticides negatively affect the health of farm workers. Transportation of agricultural products has also promoted the cross-border spread of pests and diseases. In addition, desertification-induced dust storms can cause respiratory disorders.

47. All this shows that combating hunger and malnutrition in a sustainable manner and guarding against high and volatile food prices will require a radically different approach that addresses the structural constraints on food production within a wider framework of sustainable natural resource management. Synergies need to be identified among the different sectors to implement important "win-win" options through better resource management and an enabling institutional environment. Only with such as integrated approach can land degradation and deforestation be reduced and water used sustainably while, at the same time, productivity be increased.

48. The world now needs a truly green revolution in agriculture; one that is conducive to the kind of technological innovation that aims to radically improve the productivity of small farm holdings through environmentally sustainable natural resource management embedded in broader developmental agricultural support measures.

49. The Group of Twenty (G-20) has already proposed an action plan on food price volatility and agriculture, which will be submitted to its leaders at its summit in November 2011. Its main objectives will be to (a) improve agricultural production and productivity both in the short- and long-term, in order to respond to a growing demand for agricultural commodities; (b) increase market information and transparency in order to better anchor expectations from governments and economic operators; (c) strengthen international policy coordination in order to enhance confidence in international markets and to prevent and respond to food market crises more efficiently; (d) improve and develop risk management tools for governments, firms and farmers in order to build capacity to manage and mitigate the risks associated with food price volatility, in particular in the poorest countries;

[16] Study on assessment of progress on Agenda 21 and Rio Principles, draft report, United Nations Department of Economic and Social Affairs.

(e) improve the functioning of agricultural commodities' derivatives markets (this objective is being pursued through the work of Finance Ministers and Central Bank Governors).[17]

50. But the international community has much more to contribute to a global agenda for food security and sustainable development. The United Nations Conference on Sustainable Development can be the right framework to renew commitments, such as the one regarding the financial pledges made in the aftermath of the food crisis of 2007-2008 to eradicate hunger.

51. Other proposals deserving serious consideration include (a) a reform of agricultural subsidies in Organization for Economic Cooperation and Development (OECD) countries, including subsidies to biofuels, and support for new-generation biofuels to reduce the diversion of agricultural land use from food production; (b) increased international investment in agricultural research and development for food security, with private sector participation; (c) new financing mechanisms to expand payments to small farm holders in developing countries for environmental services that help protect natural resources, preserve biodiversity and increase carbon sequestration in agriculture and forestry; (d) the elimination of non-tariff barriers to food trade, which prevent the expansion of markets, to include small-scale producers in developing countries; (e) the adoption of green footprint standards; (f) effective regulation of commodity futures markets to avert speculation with food prices; (g) the prevention of export bans on food crops and panic buying in response to weather-related catastrophes, in order to reduce large price spikes; and (h) the establishment of mechanisms to protect vulnerable populations utilizing safety nets and food assistance, such as building a global grain reserve, in order to reduce the impact of increasing food prices.[17]

Urbanization

52. By 2030 all developing regions, including Asia and Africa, will have more people living in urban than rural areas with the expectations of 69 per cent of population living in cities by 2050[18] (see figure 5).

[17] See Ministerial Declaration, Action Plan on food price volatility and agriculture, Meeting of G-20 Agriculture Ministers, Paris, 22-23 June 2011. Available at www.uncsd2012.org/rio20/content/documents/110623_G20_AgMinisters_Action_Plan_Agriculture_Food_Price_Volatility.pdf.

[18] United Nations Human Settlements Programme, *State of the World's Cities 2010/2011 — Cities for All: Bridging the Urban Divide* (2010).

Figure 5
Selected global city-regions, urban corridors and mega-regions

Source: *State of the World's Cities 2010/2011*, UN-Habitat, 2010.

53. This trend has both its advantages and disadvantages. Cities offer human beings the potential to share urban spaces, participate in public and private events and exercise both duties and rights. These opportunities in turn make it possible to cultivate societal values and define modes of governance and other rules that enable human beings to produce goods, trade with others and get access to well-being. On the other hand, the urban divide can be so wide that the rich live in well-serviced neighbourhoods, gated communities and well-built formal settlements, whereas the poor are confined to inner-city or peri-urban informal settlements and slums.

54. This physical divide takes the form of social, cultural and economic exclusion. The urban divide is the face of injustice and a symptom of systemic dysfunction. Cities need to be vehicles for social change: places where new values, beliefs and ideas can forge a different growth paradigm that promotes rights and opportunities for all members of society. The concept of an "inclusive city", or "a city for all", encompasses the social and economic benefits of greater equality and environment protection, promoting positive outcomes for each and every individual in society.

55. For this to be achieved, local city authorities, but also broadly authorities at the national level, need to address key challenges of today's urbanization, by promoting integrated land-use planning, expanding access to basic services, encouraging sustainable buildings and implementing sustainable transport. They need to anticipate expansion with sound planning policies and related actions that control the speculation associated with urban sprawl. Cities must also grant rights to the urban poor, along with affordable serviced land and security of tenure, if further peripherization is to be avoided.

56. This also means reduction of people living in slums. Over the past 10 years, the share of the urban population living in slums in the developing world has declined significantly: from 39 per cent in 2000 to 33 per cent in 2010. On a global scale, this is cause for optimism. However, in absolute terms, the number of slum-dwellers in the developing world is actually growing and is expected to rise in the near future. Informal settlements in the developing world are growing, and the number of urban residents living in slum conditions is now estimated at some 828 million, compared to 657 million in 1990 and 767 million in 2000.[19]

57. Policy reforms to prevent future slum growth through equitable planning and adequate economic policies are necessary. The spatial divide of slums, which are often physically isolated and disconnected from the main urban fabric in developing country cities, does not just reflect income inequalities among households; it is also a by-product of inefficient land and housing markets, ineffective financial mechanisms and poor urban planning.

58. It is therefore necessary that laws and regulations benefit the urban poor, especially women. Empowering the poor and lifting them out of poverty is essential for taking advantage of the urban dwelling.

59. The United Nations Conference on Sustainable Development can be a good forum to pave the way to this urban inclusiveness, especially by considering the following strategic steps: assessing the past and measuring progress (understanding the specific factors that contributed to the current situation and assessing future policies and practices to monitor progress and evaluate performance); making institutions stronger and more effective; building new linkages and alliances among the various tiers of government (combining policies and resources among public and private sectors and civil society); demonstrating a sustained vision to promote inclusiveness (i.e., a workable plan with clearly defined funding sources and accounting mechanisms); and ensuring the redistribution of opportunities (by promoting cities as the primary locus for innovation, industrial and technological progress, entrepreneurship and creativity).[19]

60. This strategic framework for inclusive and sustainable cities can be enhanced by considering the following policy catalysts: improve quality of life, especially for the urban poor by creating conditions for improved access to safe and healthy shelter, secure tenure, basic services and social amenities such as health and education; invest in human capital formation which is a condition for socio-economic development and a more equitable distribution of the urban advantage; foster sustained economic opportunities that can stimulate sustained economic growth for poor and underprivileged populations through promotion of labour-intensive projects; enhance political inclusion by engaging citizens in decision-making; promote cultural inclusion such as social capital, tradition, symbols, meaning, sense of belonging and pride of place, on top of use of local cultural resources by local communities.[19]

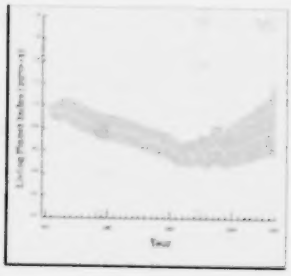
[19] See *The Millennium Development Goals Report 2010*, United Nations publication, Sales No. E.10.I.7 (2010).

Biodiversity[20]

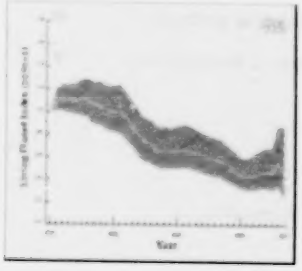
61. Biodiversity, if managed sustainably, offers opportunities for poverty eradication, human well-being and livelihood, and sociocultural integrity of people. However, in the 20 years since the Rio summit, biological diversity has continued to decline in three main areas: ecosystems, genes and species (see figure 6). The world has missed the 2010 target to achieve a significant reduction of the current rate of biodiversity loss at the global, regional and national levels. Nearly 17,000 species of plants and animals are known to be threatened with extinction. Based on current trends, the loss of species will continue throughout this century, with increasing risk of dramatic shifts in ecosystems and erosion of benefits for society. Billions of people, including many of the poorest, rely directly on diverse species of plants and animals for their livelihoods and often for their survival.

Figure 6

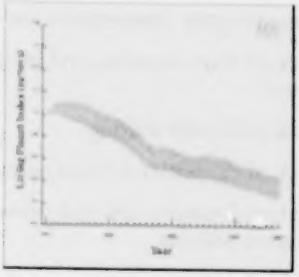
Trends in biodiversity since 1970 in sub-Saharan Africa



Trends in biodiversity since 1970 in Latin America



Trends in biodiversity since 1970 in Indo-Pacific



Source: Study on assessment of progress on Agenda 21 and Rio Principles, draft report, United Nations Department of Economic and Social Affairs.

62. Several obstacles prevent the full implementation of the objectives of the Convention on Biological Diversity, including limited capacity in both developed and developing countries of financial, human and technical issues; the absence of, or difficulties in accessing, scientific information; limited awareness of biodiversity issues among the general public and decision makers; limited biodiversity mainstreaming; fragmented decision-making and limited communication between different ministries or sectors; and the absence of economic valuation of biodiversity (see figure 7).

[20] See A/66/291.

Figure 7

Issues	*ALL*	*IN*	*ET*	*OD*	*LD*	*SI*
Lack of financial, human and technical resources	●	●	●	●	●	●
Lack of public education and awareness at all levels	●	●	●	●	●	
Lack of economic incentive measures	●		●	●	●	●
Loss of biodiversity, goods and services not properly understood, documented	●		●	●	●	●
Lack of knowledge and practice on ecosystem-based management	●		●	●		●
Inadequate capacity to act, caused by institutional weaknesses	●			●	●	●
Lack of effective partnerships	●		●		●	●
Lack of horizontal cooperation among stakeholders	●		●		●	
Unsustainable consumption and production patterns	●		●		●	
Lack of mainstreaming and integration of biodiversity issues	●		●			
Lack of benefit-sharing				●	●	●
Lack of capacities for local communities				●	●	●
Lack of precautionary and proactive measures, reactive policies			●	●		
Lack of synergies at the national and international levels					●	●
Lack of political will and support to implement the CBD			●			
Limited public participation and stakeholder involvement			●			
Lack of transfer of technology and expertise					●	
Lack of adequate scientific research capacities					●	
Loss of traditional knowledge						●
Existing scientific and traditional knowledge not fully utilized						●
Lack of appropriate policies and laws						●
Weak law enforcement capacity						●

Note: column headings: ALL = all reporting countries; IN = industrialized countries; ET = countries with economies in transition; OD = other developing countries (i.e., developing countries excluding least developed countries and small island developing States); LD = least developed countries; SI = small island developing States.

Source: Study on assessment of progress on Agenda 21 and Rio Principles, draft report, United Nations, Department of Economic and Social Affairs (2011).

63. If these challenges are not addressed, there is a high risk of dramatic biodiversity loss and accompanying degradation of a broad range of ecosystem services, especially if ecosystems are pushed beyond certain thresholds or tipping points. Well-targeted policies focusing on critical areas, species and ecosystem services are essential to avoid the most dangerous impacts on people and societies. Preventing further human-induced biodiversity loss for the near-term future will be extremely challenging, but biodiversity loss may be halted and, in some aspects, reversed in the longer term, if urgent, concerted and effective action is initiated now in support of an agreed long-term vision.

64. The most important challenge facing biodiversity is shortage of funds. Innovative financial mechanisms, which would leverage additional funds from the private sector, have been proposed such as payments for ecosystem services based on a beneficiary pays system; a biodiversity offset mechanism based on the polluter pays principle; environmental fiscal reform using taxation policies; the creation of markets for green products; and international financial mechanisms such as global lottery, global bonds and trust funds, public guarantees and insurance mechanisms, equity investments, green development mechanisms and a currency transaction tax.[16] However, these measures are not readily accepted by a number of developing countries, which fear additional costs and a decrease in development assistance.

65. The Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity,[21] which was adopted by the Conference of the Parties to the Convention on Biological Diversity at its tenth meeting on 29 October 2010 in Nagoya, Japan, is an international agreement that aims at sharing in a fair and equitable way the benefits arising from the utilization of genetic resources. The agreement provides for the appropriate access to genetic resources and appropriate transfer of relevant technologies, taking into account all rights over those resources and to technologies, and by appropriate funding, thereby contributing to the conservation of biological diversity and the sustainable use of its components. This might present yet another mechanism to safeguard biodiversity. Since it opened for signature in February 2011, it has been signed by 38 parties.[22] The agreement presents, however, another challenge as it touches on international regimes, such as the trade-related intellectual property rights regime.

66. Effective action to address biodiversity loss depends on addressing the underlying causes or indirect drivers of that decline. This requires strategic planning and greater efficiency in the use of land, energy, fresh water and materials to meet growing demand and to reconcile development with conservation of biodiversity; use of market incentives; avoidance of perverse subsidies to minimize unsustainable resource use and wasteful consumption; ensuring the benefits arising from use of and access to genetic resources and associated traditional knowledge — for example, through the development of drugs and cosmetics — are equitably shared with the countries and cultures from which they are obtained; communication, education and awareness-raising to ensure that everyone understands the value of biodiversity and what steps can be taken to protect it, including through changes in personal consumption and behaviour.[23]

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[21] See UNEP/CBD/COP/10/27, annex, decision X/1.

[22] At the time of the submission of this report.

[23] Secretariat of the Convention on Biological Diversity, *Global Biodiversity Outlook 3*, Montreal (2010). Available at www.cbd.int/doc/publications/gbo/gbo3-final-en.pdf.

67. The United Nations Conference on Sustainable Development can ensure that better decisions for biodiversity are made at all levels and in all sectors, in particular the major economic sectors. Governments have a key enabling role to play in this regard. National programmes or legislation can be crucial in creating a favourable environment to support effective "bottom-up" initiatives led by communities, local authorities, or businesses. This also includes empowering indigenous peoples and local communities to take responsibility for biodiversity management and decision-making; and developing systems to ensure that the benefits arising from access to genetic resources are equitably shared.

Oceans

68. Oceans, comprising 72 per cent of the Earth's surface, constitute a major part of the planet that supports life, drive the climate and hydrological cycles and provide vital resources. Oceans, seas islands and coastal areas form an integrated and essential component of the Earth's ecosystem and are critical to global food security and sustainable economic prosperity and the well-being of many national economies, particularly in developing countries.[24] Globally, the fish sector provides income and livelihood for millions of people. In 2008 fish and aquatic plant sales amounted to $106 billion, and the fisheries industry provided livelihoods for about 540 million people, or 8 per cent of the world population.[25] A focus on ensuring healthy and productive oceans is a vital component for achieving sustainable development goals, including those related to promoting a green economy. However, the progress has been slow.

69. Under the aegis of the United Nations Convention on the Law of the Sea, the implementation of oceans-related decisions include the establishment of the Agreement relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea to advise the General Assembly. The General Assembly has also established a regular process for global reporting and assessment of the state of the marine environment. Port States' measures to prevent, deter and eliminate illegal, unreported and unregulated fishing are overseen by FAO and the International Convention for the Control and Management of Ships Ballast Water and Sediments is under the auspices of the International Maritime Organization. Furthermore, regional fisheries management organizations have been set up to deal with region-specific challenges. .

70. Despite these efforts, the World Summit on Sustainable Development target of restoring fish stocks to their maximum sustainable yields by 2015 are likely to be unmet, as are other targets, including the reversal of biodiversity loss in the oceans and the elimination of destructive fishing practices. The establishment of marine protected areas, another decision taken at the World Summit on Sustainable Development, is taking place at a slow pace. The United Nations Conference on Sustainable Development represents an opportunity to take action to speed up

[24] *Report of the World Summit on Sustainable Development, Johannesburg, South Africa, 26 August-4 September 2002* (United Nations publication, Sales No. E.03.II.A.1 and corrigendum), chap. I, resolution 2, annex, para. 30.

[25] Food and Agriculture Organization of the United Nations, *The State of World Fisheries and Aquaculture 2010*, part 1, p. 7.

implementation and take action on newly emerging threats such as ocean acidification, ocean noise and plastics, microplastics and marine debris.

IV. Institutions and governance

71. Governance today is, on the one hand, more complex and, on the other, more inclusive. It is more complex because State actors are not the only ones, and it is more inclusive because for governance to be democratic and to be considered politically legitimate[26] it needs to incorporate non-State actors, notably business, industry and civil society at large.

72. Attention to legitimacy arises because of a perceived need to increase the authority necessary to promote sustainable development. To improve institutional legitimacy, mechanisms and processes are needed to create common and coherent expectations across relevant stakeholders and communities that may have very different conceptions of legitimate governance or sustainable development. For example, countries at different levels of development or with different political cultures may view trade-offs differently between universal participation and efficiency in decision-making, or have different understandings of the appropriate role of States and markets in development. Similarly, market actors (firms, business associations, investors) may stress pragmatic and performance legitimacy criteria, whereas social and environmental groups may judge legitimacy on the grounds of environmental and social integrity and prioritize procedural legitimacy and accountability to wider communities. Meeting legitimacy demands will require ways to encourage bridging across these potentially different understandings.[27]

73. Institutions and governance need to perform a normative function, a technical and analytical function, an operational function and a role in monitoring implementation. Institutions also need to reflect the integration of the three pillars of sustainable development.

74. So far little has been done in the integration area. The enabling framework for the integration of all three pillars of sustainable development has been weak at all levels: international, regional and national and even subnational and local. In a number of deliberations, both Governments and other stakeholders blame the fragmentation of institutions. However, institutions are a result of functions they have been asked to perform. Sustainable development cannot be an afterthought of overall development, but must be mainstreamed into development. The institutional framework needs to reflect this integration from the start.

75. Coming to institutions, they cover a spectrum of formal and less formal bodies, organizations, networks and arrangements that are involved in policymaking or implementation activities. Globally, the institutional framework has witnessed a dramatic growth in the number of institutions and agreements, with more than 500 multilateral environmental agreements currently in existence. Thus the reach of

[26] Political legitimacy can be defined as the acceptance and justification of shared rule by a community, Steven Bernstein, "Legitimacy in Global Environmental Governance", *Journal of International Law and International Relations*, vol. 1 (1-2) (2005).

[27] Steven Bernstein, "Legitimacy in intergovernmental and non-state global governance", *Review of International Political Economy* 18 (February 2011).

sustainable development governance has greatly expanded, but, at the same time, it is fragmented and lacks coherence and coordination.

76. Many arrangements have been created with only limited governmental involvement.[28] These include the International Union for the Conservation of Nature, a global network that includes Governments and many non-governmental actors; the United Nations Global Compact, which has emerged as a formal link for the United Nations system to engage with the private sector, is based on the commitment to eight core principles. There has also been considerable innovation in the development of standards and codes by non-governmental actors, with varying degrees of involvement by Governments and international institutions. A range of voluntary initiatives seeks to broaden the adoption of key principles, such as the Equator Principles on financing, the Global Reporting Initiative, which aims to lift the bar for corporate reporting on sustainability, and the International Organization for Standardization process, most recently addressing corporate social responsibility.

77. In addition, establishing strong networks and exchange of information among all actors and stakeholders, as well as involving them in decision-making processes, could be the right track not only to keep focus on the integration of the three pillars of sustainable development, but also to ensure implementation, review and monitoring at all levels.

78. The United Nations Conference on Sustainable Development can look at different options and might want to decide how best to enable structures and institutions to work in a more synergistic way in order to deliver on international commitments, but also to help efforts at the national level.

79. At the international level, it has been underlined that the institutional framework needs to be supportive of the integration of the three pillars of sustainable development, and should avoid duplication and strengthen coherence and synergies,[29] including among normative, technical and analytical, and operational work. The United Nations needs to have a strong intergovernmental body for sustainable development that can promote integration of the three pillars, but also deal with new emerging issues, and monitor and review progress in implementation.

80. A number of options have been presented for strengthening the institutional framework for sustainable development, including those of the Helsinki-Nairobi Outcome.[30] Some propose new structures, but the majority seem to be in favour of strengthening the existing structures or elevating them to a higher level. Thus there is discussion of the merits of creating a new world environment organization, changing the Economic and Social Council into a Sustainable Development Council or creating a forum within the Economic and Social Council that would deal with sustainable development. There are also proposals to elevate the Commission on

[28] See A/CONF.216/PC/7.

[29] See Co-Chairs' summaries of the First and Second Preparatory Committee meetings and the first intersessional meeting of the United Nations Conference on Sustainable Development preparatory process. Available at www.uncsd2012.org/rio20/index.php?menu=44.

[30] The Helsinki-Nairobi Outcome proposes five options to be examined: enhancing UNEP; establishing a new umbrella organization for sustainable development; establishing a specialized agency such as a world environment organization; reforming the United Nations Economic and Social Council and the United Nations Commission on Sustainable Development; and enhancing institutional reforms and streamlining existing structures.

Sustainable Development to the Sustainable Development Council as a subsidiary body of the General Assembly.

81. To balance the three pillars and align the environmental pillar with the others, there have been proposals to strengthen UNEP. Options discussed have explored elevating the United Nations Environment Programme to specialized agency status, creating a World Environment Organization or simply revising the mandate of United Nations Environment Programme within its current structure.

82. Better coherence and coordination within the United Nations system is proposed to be enhanced by creating an inter-agency mechanism for sustainable development. With the present arrangements[31] there is an apparent disconnect between the bodies making normative decisions and the bodies delivering on normative commitments made at the global level. Those currently responsible for implementation feel only weak ownership of the normative decisions unless they are incorporated into mandates from their own governing bodies.

83. At the national level, one response to the integration challenge has been to create new institutions, such as national councils, in many cases with disappointing results. An arguably more effective alternative has been to integrate economic, environmental and social goals within the mandate of existing institutions. Longer-term budgeting and sound regulatory instruments can be important tools for integration.

84. At one level, integration can refer to the inclusion of the dimensions of sustainable development in the formulation of legal frameworks, the definition of property rights and the organization of government. At another level, integration refers to the process of day-to-day implementation: that is, how policies, management decisions, instruments and interventions are deployed. Integrated implementation is facilitated by factors such as the presence of the requisite capacity in government and civil society; compatible objectives; the existence of supportive legal and institutional frameworks; and easy access to data and information for decision-making. At the national level, horizontal integration across sectoral institutions and between different levels of government assumes great importance.[28]

85. Another important element at the regional and national levels is improving analysis, assessment and scientific research, as well as monitoring and accountability. In this regard, there is a role not only for international institutions, which, can help in monitoring and accountability,[32] but also for regional and national institutions, which, with their presence on the ground, can support national and local analysis, data gathering and assessment and build national and local capacity for analysis, establishment and enforcement of regulatory and incentive frameworks.

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[31] There is the Chief Executives Board and the Environment Management Group, in relation to the environment. Several thematic inter-agency mechanisms have been established, including UN-Energy, UN-Oceans and UN-Water, with the objective of fostering cooperation and information-sharing among United Nations entities. The United Nations Development Group assumes a role in relation to development activities on the ground, operationalizing normative decisions.

[32] One suggestion made is to introduce a universal or voluntary review mechanism as one of the core functions of a reformed Commission on Sustainable Development.

86. It must be recognized that, at the national level, considerable progress has been achieved in strengthening institutional mechanisms dealing with policy formulation, coordination, implementation and review. Many countries have put in place national sustainable development strategies and related instruments, but these are seldom the most important reference documents for economics ministries and donors. A central challenge is to ensure that such strategies have an impact on policymaking and implementation. Various mechanisms can be used to monitor the progress and implementation of national sustainable development strategies, including internal reviews, external auditing, parliamentary and budgetary reviews and indicator-based monitoring.[32]

87. The United Nations Conference on Sustainable Development can pave the way to better connect international, regional and national levels in order to strengthen implementation, as well as the monitoring of progress.

88. Effective public participation aids the integration of the three pillars in policy formulation and implementation. Policy formulation and implementation are more than a wise allocation of resources and good stewardship; the process matters. Ignoring social marginalization, vulnerability and the uneven distribution of resources frays the trust needed for collective action. Giving greater voice to the poor and marginalized groups in decision-making is thus a high priority. Providing better access by the poor to information can be a valuable means of empowerment.

89. More can be done to build on progress made to promote transparency and accountability through access to information and stakeholder involvement in decision-making. In this regard, the participation of major groups in the work of the Commission on Sustainable Development is an important feature and needs to be further enhanced in any future arrangements. In recent years, close to 1,000 representatives of 9 major groups have pre-registered for sessions of the Commission on Sustainable Development, and several hundred participate actively in the process. Accelerating implementation at the country level, however, requires, in addition to current efforts, engaging with many international intergovernmental and non-governmental organizations that are managing large-scale implementation of sustainable development projects but are not currently represented at Commission sessions. Thus, broadening the base of participation by major groups in the Commission process is important.[33] Major groups have also been very active in the preparations for the United Nations Conference on Sustainable Development.[34]

90. Partnerships are another important element of governance arrangements and, since the World Summit on Sustainable Development, the Commission on Sustainable Development has played an important role in facilitating partnerships among Governments, major groups and other national and international institutions with the objective to implement decisions of the Commission on the ground. This experience needs to be taken to the next stage, and the Conference might want to look into several options that are being floated, including dedicated partnerships (or partnerships of partnerships) for each set of policy decisions.

[33] See A/CONF.216/PC/2.

[34] See site of major groups at the United Nations Conference on Sustainable Development secretariat website for the Conference at www.uncsd2012.org/rio20/index.php?menu=35.

V. Actions in international cooperation and means of implementation

91. Sustainable development is a compact between developed and developing countries, between State and non-State actors, between rich and poor, and between generations, and it presupposes international cooperation. Without solidarity and without building equity, there cannot be prosperity. Globalization has shown that the world has become so interconnected that no single country or region can feel they can be immune from what is happening in the rest of the world. It is therefore in the interest of all to build international cooperation.

92. It has been stated repeatedly that Governments have a primary responsibility for their citizens, but Governments in developing, and especially in least developed countries, need help even though they remain in the driver's seat. They need capacity-building, technology transfer and means of implementation, if they are to achieve sustainable development, for which both economic and social transformation are necessary, together with environment protection.

93. However, it cannot be forgotten that the international landscape brings transformative change. One of the most visible outcomes of this transformation is the rise in the number of dynamic emerging-market countries at the helm of the global economy. It is likely that by 2025 emerging economies will be major contributors to global growth, alongside the advanced economies. The international monetary system is likely to cease being dominated by a single currency. Emerging-market countries, where three fourths of official foreign exchange reserves are currently held and whose sovereign wealth funds and other pools of capital are increasingly important sources of international investment, will become key players in financial markets. In short, a new world order with a more diffuse distribution of economic power is emerging, thus the shift towards multipolarity.[35]

94. In a world of progressively greater multipolar economic growth and more financial centres, policymakers will need to equip themselves with the tools and the capabilities to effectively capitalize on opportunities, while simultaneously safeguarding their economies against the risks that remain stubbornly high as the global economy struggles to find a stable footing.

95. This is the reason why it is so important for developing countries to have sufficient means of implementation, on one hand, and a secure and enabling environment with enough policy space, on the other, to be able to build viable economies, social justice and equity, and all within care systems of the Earth, while building resilience to all kind of shocks, including economic, social and natural shocks.

96. That is why so many advocate making the economy greener. But the economy does not just need to be the right colour. It needs to take the right shape. It should slash global carbon emissions, and it should also go further to guard natural assets such as fisheries and forests. It should create "green jobs" for a rising population of new workers and encourage innovative business models that empower poor producers, which means improving social equity and lifting poor out of poverty.

[35] World Bank, *Global Development Horizons 2011 — Multipolarity: The New Global Economy* (2011).

97. For this to happen, access to energy, as discussed above, and technology transfer are the most important preconditions. This is, of course, connected with ODA, its disbursement as well as its efficient use, lifting the debt burden and increasing technology transfer along the lines of the Bali Strategic Plan for Technology Support and Capacity-building,[36] as well as better access to markets and tariff reductions by developing countries.

98. Chapter 33 of Agenda 21 is about financial resources and mechanisms. The implementation cost of Agenda 21 in developing countries was estimated at $600 billion each year, of which $125 billion was to come from developed nations. The table below evaluates the state of implementation of the primary commitments of chapter 33 as of 2010, according to some basic progress indicators.

Table

Financial mechanism	*Commitment per chapter 33*	*Progress indicators*	*Implementation*
1. Official development assistance (ODA)	Reaffirmation of 0.7% ODA/GNP	OECD ODA levels	ODA decrease 1992 to 2000, now increasing
2. International development association (IDA)	Propose replenishment for 1992	International development association replenishment amounts	Funds increasing: more donor countries and higher donor amounts
3. Global Environmental Facility (GEF)	Restructure to more transparent structure and Agenda 21 focus	GEF replenishment amounts	Funds increasing and managing funds for more international agreements
4. Bilateral aid	Increase support	Bilateral donor commitments (seen in OECD Donor Country Aid Statistics)	Follows same trend as ODA, decreases until 2000, now increasing
5. Debt relief	Support 1991 Paris Club agreement, create measures	Reductions in debt burden; debt relief initiatives	1991 passed, high relief for Iraq and Nigeria recently, currently dipping
6. Multilateral development banks	Increase support	Lending amounts from the World Bank, IMF and other regional banks	General lending increases (based on need), large recent increase in response to financial crisis
7. Foreign direct investment	Increase support	FDI levels	Increasing but volatile resource for individual countries
8. Innovative financing (i.e., incentives, tradable permits, military spending)	Explore innovate financing options	Finance addressed through innovate sources	Innovative schemes further developed in recent conferences, especially in response to global financial crisis

Source: Study on assessment of progress on Agenda 21 and Rio Principles, draft report, United Nations Department of Economic and Social Affairs (forthcoming).

Abbreviations: IDA, International Development Association; FDI, foreign direct investment.

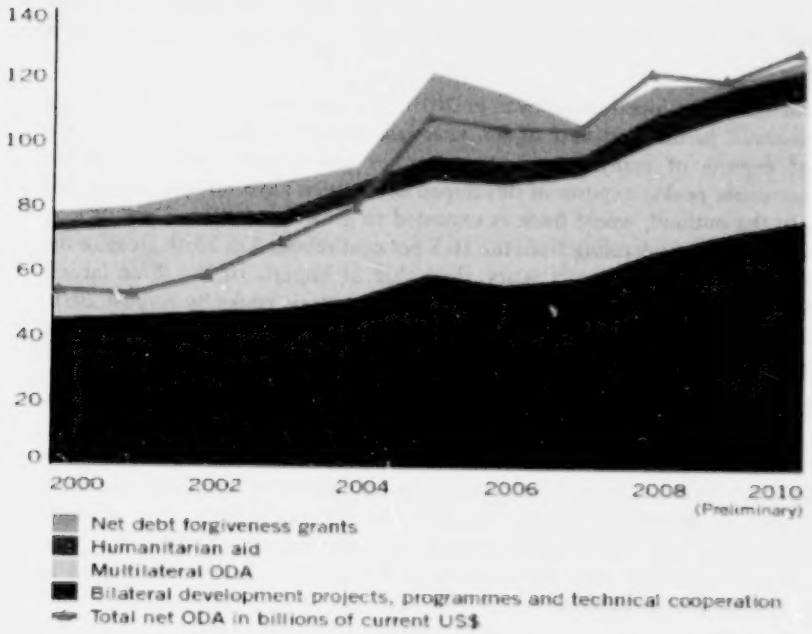
[36] See UNEP/GC.23/6/Add.1.

99. Chapter 33 also reaffirmed the ODA target of 0.7 per cent GNP given annually per developed nation, but deceleration of global economic growth in mid-2010 weakened the policy response and it is expected to be much less supportive in the near term, especially as widening fiscal deficits and rising public debt have undermined support for further fiscal stimuli. Many Governments, particularly those in developed countries, are already shifting towards fiscal austerity. This will also adversely affect global economic growth during 2011 and 2012.[37] In 2010, net aid disbursements amounted to $128.7 billion, equivalent to 0.32 per cent of developed countries' combined national income. This was the highest level of real aid ever recorded and an increase of 6.5 per cent in real terms over 2009. Excluding debt relief and humanitarian aid, bilateral aid for development programmes and projects rose by 5.9 per cent in real terms, as donors continued to scale up their core development projects and programmes. Most of the rise was in new lending (which grew by 13.2 per cent), but grants also increased (by 6.8 per cent)[38] (see figure 8).

Figure 8

Official development assistance (ODA) from developed countries, 2000-2010

(Billions of constant 2009 US$ and current US$)



Source: *Millennium Development Goal Report 2011*.

[37] *World Economic Situation and Prospects 2011*, United Nations publication, Sales No. E.77.II.C.2.

[38] *The Millennium Development Goal Report 2011*, United Nations (2011).

100. In 2010, Denmark, Luxembourg, the Netherlands, Norway and Sweden continued to exceed the United Nations target for ODA of 0.7 per cent of their gross national income (GNI). The largest donors by volume were the United States, followed by the United Kingdom, France, Germany and Japan. The largest increases in ODA in real terms between 2009 and 2010 were made by Australia, Belgium, Canada, Japan, Portugal, the Republic of Korea and the United Kingdom. Looking ahead, a recent OECD survey shows that most donors plan to increase aid over the coming three years, though at a sharply reduced pace. Aid will grow at 2 per cent a year between 2011 and 2013, compared to an average of 8 per cent a year over the past three years.[35]

101. A country's external debt burden affects its creditworthiness and vulnerability to economic shocks. Better debt management, the expansion of trade and, particularly for the poorest countries, substantial debt relief have reduced the burden of debt service. Between 2000 and 2008, the average ratio of public debt service to exports for developing regions declined from 12.5 per cent to 3.4 per cent. In 2009, owing to the global economic crisis, export earnings of developing countries declined by 21 per cent, while total public debt service remained at about the same level as in 2008. As a consequence, the ratio of public debt service to exports increased for all developing regions except Southern Asia, Western Asia and Oceania, with the overall average rising to 3.6 per cent. The impact was most pronounced for the small island developing States and the least developed countries.[36]

102. World trade continued to recover in 2010, but the momentum of the strong growth observed in the first half of the year has started to peter out. While the volume of exports of many emerging economies has already recovered to, or beyond, pre-crisis peaks, exports of developed economies have not yet seen a full recovery. In the outlook, world trade is expected to grow by about 6.5 per cent in both 2011 and 2012, moderating from the 10.5 per cent rebound in 2010. Despite the gradual recovery of the past two years, the value of imports of the three largest developed economies was still significantly below pre-crisis peaks by August 2010. Meanwhile, export recovery in these economies is mirrored in the fast growth of imports by countries in East Asia and Latin America.[37]

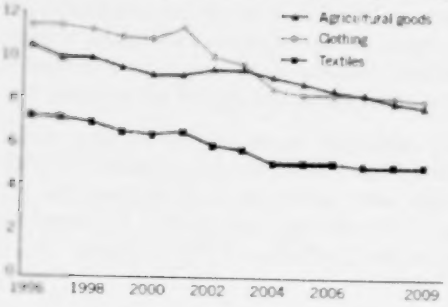
103. Despite fears of renewed protectionism at the beginning of the economic crisis in 2008, the strong international governance that emerged from the G-20 summit and other multilateral initiatives averted a return to restrictive trade practices. The vast majority of exports from developing countries are now imported free from custom duties in developed country markets. Recent years have seen a slight increase in the proportion of duty-free imports from developing countries other than least developed countries, with the proportions for the two groups converging at about 80 per cent of their exports.[38]

104. Thanks to the general reduction of tariffs in developed markets, more and more products are now routinely imported duty free under the World Trade Organization's most favoured nation treatment. However, when most favoured nation treatment is excluded, only 19 per cent of exports by developing to developed countries benefited from "true" preferential treatment. On the other hand, true preferential duty-free treatment remains the dominant mode through which least developed countries gain access to the markets of developed countries. The proportion of least developed country exports benefiting from such preferences has

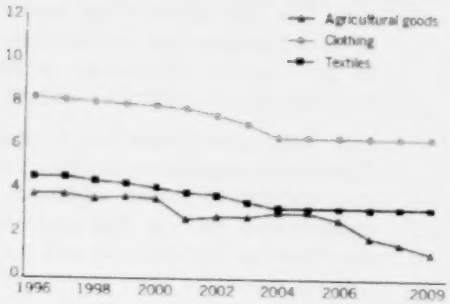
been increasing over the years, reaching 53 per cent in 2009. All but one of the developed countries have granted duty-free market access to at least 97 per cent of products originating from least developed countries[38] (see figure 9).

Figure 9

Developed countries' average tariffs on imports of key products from developing countries, 1996-2009 (percentage)



Developed countries' average tariffs on imports of key products from least developed countries, 1996-2009 (percentage)



Source: *Millennium Development Goal Report 2011*.

105. The main challenge remains to find ways to arrive at credible and effective policy coordination among major economies. In this regard, some consider that the G-20 framework for sustainable global rebalancing would be a good tool if it were made more specific and operational. Having clear and verifiable targets for desired policy outcomes would help make parties accountable. This would also be conducive for strategic investment in the infrastructure (power, transport, etc.) to support the transition to a green economy. A number of countries are already prioritizing green investment and developing strategies and policies to support it, while researchers are developing the conceptual and empirical support for such policies.

106. Need for affordable access to new and existing environmentally sound technologies is growing apace with the climate threat. Ever since the 1972 Stockholm Conference on the Human Environment, transfer of technology and knowledge-sharing have been an essential part of discussions on how to achieve sustainable development and address global sustainable development challenges. At the same time, developing countries will need support in building their own technological capacity so as to ensure that they undergo a smooth transition to a low-emissions economy and maintain competitiveness in an open global economy. In devising technology capacity-building plans, more focus could be given to the demands of users, improved aid coordination and donor collaboration, capacity-building investments on regional and global levels, and a greater role for information technology in capacity-building.

VI. Progress in the preparations for the United Nations Conference on Sustainable Development

107. Since the last report on Agenda 21, the Programme for the Further Implementation of Agenda 21 and the outcomes of the World Summit on Sustainable Development[1] and as at the time of submission of the present report, one intersessional meeting[39] and two meetings of the Preparatory Committee[40] have taken place. The first intersessional meeting was an informal meeting that considered the advanced unedited copy of the synthesis report on best practices and lessons learned on the objective and themes of the United Nations Conference on Sustainable Development. A Co-Chairs' summary was issued as the outcome of that meeting.[41]

108. The second Preparatory Committee meeting,[42] as an official meeting of the Conference preparatory process, considered the official synthesis report,[43] which was updated to reflect additional inputs and views from participants at the intersessional meeting. The proceedings of the meeting were further supported by my report on the objective and themes of the Conference.[28] The outcome of the meeting was a Co-Chairs' summary.[44]

109. The second Preparatory Committee meeting also adopted a decision in which the Bureau was requested to initiate an open, transparent and inclusive process led by Member States, to prepare in a timely manner a draft text, based on all preparatory inputs, to serve as the basis for an outcome document for the Conference. It also invited all Member States, the relevant United Nations system organizations, and relevant stakeholders to provide their inputs and contributions in writing by 1 November 2011, for inclusion in a compilation document to serve as the basis for the preparation of the zero draft of the outcome document. At the same time, it requested the Bureau to compile these inputs and contributions and present their compilation text to Member States and other stakeholders at the second intersessional meeting to be held in mid-December 2011 and to seek their comments and further guidance in order for the Co-Chairs to present, on behalf of the Bureau, the zero draft of the outcome document for consideration no later than early January 2012. It also recommended to the Bureau to convene a three-day meeting in January 2012, for the purpose of having initial discussions on the zero draft of the outcome document, and set aside one full week for negotiations in each of the months of February, March and April 2012, ensuring that all these meetings are informal informals.

110. The Preparatory Committee has decided the dates of the Conference, which will be 4 to 6 June 2012, to be preceded by the third meeting of the Preparatory Committee, from 28 to 30 May 2012.

111. The Bureau sent a letter in March 2011 to all Member States, the United Nations system organizations and other relevant stakeholders, inviting them to

[39] First intersessional meeting, 10-11 January 2011 in New York.
[40] Second Preparatory Committee meeting, 7-8 March 2011 in New York.
[41] See www.uncsd2012.org/rio20/index.php?page=view&type=13&nr=24&menu=25.
[42] See www.uncsd2012.org/rio20/index.php?page=view&type=13&nr=28&menu=24.
[43] See A/CONF.216/PC/8.
[44] See www.uncsd2012.org/rio20/index.php?page=view&nr=217&type=12&menu=24&template=435.

provide their inputs by 1 November 2011, and also issued a guidance note for the submission of inputs in July 2011.[45]

112. The Bureau also asked the Conference Secretary-General and the Conference secretariat to prepare a study on the five options of the Helsinki-Nairobi Outcome. The secretariat has initiated this action in consultation with the Executive Committee of Economic and Social Affairs Plus of the United Nations. The Executive Committee felt the need to broaden the scope of the study to include options for strengthening each of the three pillars and for their more effective integration. The study on the Nairobi-Helsinki Outcome will be a part of this broader study mandated by the Executive Committee, which will be presented in September 2011.

113. Member States,[46] United Nations system entities[47] and major groups[48] are also holding a number of preparatory meetings. Regional commissions have set the dates for their preparatory meetings between September and December 2011.[49] A number of documents have been produced in preparation for and as a result of discussions at these different meetings, but also as part of the preparation process more broadly.[50]

114. The Conference Secretary-General[51] with the dedicated secretariat[52] is supporting Member States in their preparatory work by co-organizing meetings, producing background papers and issue briefs, supporting meetings of the Bureau and preparing official documentation requested by Member States.

115. The secretariat is also supporting national-level preparations through a joint project proposal prepared by the Department of Economic and Social Affairs and the United Nations Development Programme. Given the urgent need for country-level support, the Department of Economic and Social Affairs is supporting, through its capacity-building programme, national preparations in 21 countries, most of which are least developed countries. Guidance notes have been sent to the United Nations country teams to assist countries in their preparations towards the Conference.

116. The secretariat team is working closely with the major groups to organize consultative workshops and other training activities. It is also continuing its efforts to raise funds for the Trust Fund of the Conference in order to be able to support better national preparations and participation of developing countries and major groups in the preparatory meetings.

117. The Conference website[53] has been upgraded. In addition to being more user-friendly, it provides a wealth of information on different aspects of the preparatory process leading up to the Conference and is updated daily. Protocols have been established to enable Member States and other stakeholders to log into their respective pages and directly update the information, and they can also submit

[45] See www.uncsd2012.org/rio20/index.php?page=view&type=12&nr=238&menu=32.
[46] See www.uncsd2012.org/rio20/index.php?menu=50.
[47] See www.uncsd2012.org/rio20/index.php?menu=29.
[48] See www.uncsd2012.org/rio20/index.php?menu=27
[49] See www.uncsd2012.org/rio20/index.php?menu=26.
[50] See www.uncsd2012.org/rio20/index.php?menu=20.
[51] Under-Secretary-General for Economic and Social Affairs as nominated by the Secretary-General in May 2010.
[52] See www.uncsd2012.org/rio20/index.php?menu=37.
[53] See www.uncsd2012.org/rio20/index.php?menu=14.

their inputs for the compilation document online. Regular updates are also provided through the Rio+20 biweekly newsletters.

118. The Conference secretariat is also continuing its preparations with the host Government, Brazil, and an interdepartmental task force has been established in this regard. The secretariat had undertaken four missions to Brazil by the time of writing the present report. The missions focused on assessment of security needs for the Conference, reviewing building and architectural requirements for holding the Conference and all other logistic preparations, including the number of conference rooms and the Host Country Agreement. Logistical preparations also include efforts by the Rio+20 secretariat and the host Government to adopt sustainable practices for holding the Conference, including investigating the possibility of a paperless conference.

119. Modalities for holding the Conference and its third Preparatory Committee meeting in line with available resources could comprise the following:

(a) United Nations Conference on Sustainable Development

High-level plenary meetings

- The opening high-level plenary meeting of the Conference from 9 a.m. to 1 p.m. on 4 June 2012 at the Conference venue;
- Four high-level plenary meetings to be held on 4 June from 3 p.m. to 7 p.m., on 5 June from 9 a.m. to 1 p.m. and from 3 p.m. to 7 p.m., and on 6 June from 9 a.m. to 1 p.m. at the Conference venue;
- The closing high-level plenary meeting on 6 June, from 3 p.m. to 7 p.m. at the Conference venue, which is expected to conclude with the adoption of the focused political document and the report of the Conference.

Main Committee

The Main Committee would be established according to the rules of procedure for the Conference. If the need arises, this Committee would meet in parallel with the plenary meetings, except during the opening and closing sessions. The principal task of the Main Committee would be to finalize the outcome document of the Conference and all the other outstanding matters.

High-level round tables[54]

There are several options for holding high-level round tables. One option would be to hold a total of four high-level round tables over the period of the Conference: one on the first day (in the afternoon), two on the second day (morning and afternoon) and one on the third day (morning). These high-level round tables could take place in parallel with the plenary meetings. Reports from these round tables could be presented at the closing plenary.

[54] A decision on the round table and partnership events, including on the number, timing, theme(s), participation and presentation of the outcome of the round tables, would need to be made in consultation with the Bureau for the Preparatory Process of the Conference.

Other Conference events

A total of four partnership events could be undertaken to provide an opportunity for Commission on Sustainable Development Partnerships and other multi-stakeholder implementation efforts to report on progress made and identify new activities and commitments. These events would take place on the first day (in the afternoon), the second day (in the morning and afternoon) and on the third day (in the morning). A report on these events would be presented at the closing plenary.

A Learning Centre could also be organized as early as the third session of the Preparatory Committee, which would run throughout the Conference, to offer courses on topics relevant to sustainable development, including those specific to the themes of the Conference, based on availability of suitable trainers and demand by participants. A course schedule with course descriptions, including information on the instructor and language of instruction, will be made available prior to the start of the Conference. A report on the Learning Centre would be presented at the closing plenary.

(b) Third session of the Preparatory Committee[54]

The third session of the Preparatory Committee could include opening and closing plenary meetings and meetings of an ad hoc working group on the outcome document, a multi-stakeholder round table and sessions reporting on the results of national voluntary assessments. The ad hoc working group on the outcome document would meet each day as needed during the Preparatory Committee session. It would begin work immediately following the opening meeting and adjourn prior to the closing plenary meeting, where it would present its report. The multi-stakeholder round table could meet in the afternoon of the first day and the morning of the second day. Two sessions on the results of the national voluntary assessments could be held on the afternoon of the second day of the third Preparatory Committee meeting and on the morning of the third day of the meeting. Reports on the multi-stakeholder dialogues and the national voluntary assessments would be included in the report of the third session of the Preparatory Committee, to be transmitted to the United Nations Conference on Sustainable Development.

VII. Next steps

120. The General Assembly will consider at its sixty-sixth session sustainable development issues under agenda item 19 (a).[55] This will provide an opportunity to finalize organizational details and modalities of the Conference. To that end, it is recommended that the General Assembly:

(a) Take note of the progress in preparatory activities for the United Nations Conference on Sustainable Development contained in the report of the Secretary-General and endorse the recommendations contained in the report of the second session of the Preparatory Committee for the Conference;

(b) Endorse the provisional agenda of the Conference;

[55] Based on the provisional agenda of the sixty-sixth session of the General Assembly (A/66/150).

(c) Decide on the organization of work of the third session of the Preparatory Committee and the organization of work of the Conference;[56]

(d) Approve the draft provisional rules of procedure of the Conference considered by the Preparatory Committee and contained in A/CONF.216/PC/4;

(e) Endorse the arrangements for accreditation and participation in the Conference of relevant non-governmental organizations and other stakeholders;

(f) Decide that the Conference shall be open to all States Members of the United Nations and States members of the specialized agencies, with the participation of observers, in accordance with the established practice of the General Assembly and its conferences and in accordance with the rules of procedure of the Conference;

(g) Request the Secretary-General to submit a report on the outcome of the Conference to the General Assembly at its sixty-seventh session, and decide to include in the provisional agenda of its sixty-seventh session the sub-item entitled "Implementation of Agenda 21 and the Programme for the Further Implementation of Agenda 21", taking into account the outcome of the Conference.

[56] On the basis of the proposal of the Bureau for the Preparatory Process of the Conference.

United Nations A/66/288

General Assembly

Distr.: General
10 August 2011

Original: English

Sixty-sixth session
Item 66 of the provisional agenda*
Rights of indigenous peoples

Rights of indigenous peoples

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the report of the Special Rapporteur on the rights of indigenous peoples, James Anaya, submitted in accordance with Human Rights Council resolution 15/7.

* A/66/150.

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Report of the Special Rapporteur on the rights of indigenous peoples

Summary

The present report provides an overview of the activities carried out by the Special Rapporteur on the rights of indigenous peoples, James Anaya, during the first three-year term of his mandate, which began in May 2008. In particular, the report describes the Special Rapporteur's efforts to coordinate with global and regional mechanisms concerned with indigenous issues and outlines the work undertaken within four interrelated spheres of activity: promoting good practices, country reports, cases of alleged human rights violations and thematic studies.

The report includes summaries of the thematic studies that the Special Rapporteur has included in the annual reports he has submitted to date to the Human Rights Council. These includes studies on the United Nations Declaration on the Rights of Indigenous Peoples; the duty of States to consult with and obtain the consent of indigenous peoples before adopting measures that affect them; the responsibility of corporations to respect the rights of indigenous peoples; and, building on these themes, issues related to extractive industries operating in or near indigenous peoples' traditional territories.

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I. Introduction

1. n In its resolution 2001/57, the Commission on Human Rights decided to appoint, for a three-year period, a special rapporteur on the situation of human rights and fundamental freedoms of indigenous people to gather, request, receive and exchange information and communications from all relevant sources concerning human rights violations against indigenous people themselves and their communities and organizations and to formulate recommendations and proposals to prevent and remedy such violations, among other functions.

2. In its resolution 6/12, the Human Rights Council decided to extend the mandate of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, to develop a regular cooperative dialogue with Governments, relevant United Nations bodies, specialized agencies and programmes, as well as indigenous peoples, non-governmental organizations and other regional or subregional international institutions; to examine ways and means of overcoming existing obstacles to the full and effective protection of the human rights and fundamental freedoms of indigenous people, in conformity with his mandate, and to identify, exchange and promote best practices; and to promote the United Nations Declaration on the Rights of Indigenous Peoples and international instruments relevant to the advancement of the rights of indigenous peoples, where appropriate.

3. By its resolution 15/14, the Council renewed the mandate, referring to the Special Rapporteur as the Special Rapporteur on the rights of indigenous peoples, not as the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, under essentially the same terms.

4. The Human Rights Council appointed James Anaya of the United States of America Special Rapporteur on the rights of indigenous peoples for an initial term of three years beginning 1 May 2008. Mr. Anaya's appointment to the mandate was renewed for a second three-year term effective 1 May 2011.

5. The present report provides an overview of the Special Rapporteur's work during the first three years of his appointment. It describes his efforts to coordinate with United Nations and other international mechanisms and agencies, and outlines the following initiatives, carried out within four interrelated spheres of activity relevant to the mandate: promoting good practices, reporting on country situations, examining cases of alleged human rights violations and developing or contributing to thematic studies. The report includes summaries of the major points that have been made in the examination of key topics and that have been included in the annual reports of the Special Rapporteur to the Human Rights Council.

II. Coordination with other mechanisms

6. As indicated in Council resolution 15/14, a fundamental aspect of the mandate of the Special Rapporteur is his ongoing cooperation and partnership with other United Nations mechanisms dedicated to the promotion and protection of the rights of indigenous peoples, namely the Permanent Forum on Indigenous Issues and the Expert Mechanism on the Rights of Indigenous Peoples.

7. The Special Rapporteur has noted a significant level of confusion among indigenous groups, non-governmental organizations and other stakeholders about the respective roles and functions of the three mechanisms, as well as their place within the institutional structure of the United Nations. He has therefore strived to collaborate with the other mechanisms in a coherent and transparent way in order to maximize understanding about the role and purpose of each mechanism.

8. The respective mandates of these three mechanisms, created at different times and in response to different moments in the international movement to protect the rights of indigenous peoples, are complementary but overlapping in certain respects. The Special Rapporteur has consistently worked to strengthen and consolidate the coordination processes between them to avoid unnecessary duplication and to maximize opportunities and the effectiveness of each body. He believes that continued education about the individual mandates and functions of these mechanisms is essential.

9. The Special Rapporteur has, from the beginning of his mandate, participated in regular coordination meetings with both the Permanent Forum and the Expert Mechanism to promote coordination. In February 2009, he participated in a seminar in Madrid with the members of the Expert Mechanism and four members of the Permanent Forum, along with a group of experts from various regions, including the former Special Rapporteur, Rodolfo Stavenhagen. The main objective of the meeting was to promote an informal dialogue among the members of the three mechanisms so that they could better coordinate their work, as well as their activities with other United Nations agencies and bodies.

10. Since then, the Special Rapporteur has met annually with representatives of the Permanent Forum and the Expert Mechanism to share work agendas, discuss the strengths and limitations of their respective mandates and explore methods for carrying out their work in the most effective way possible.

11. The Special Rapporteur has also worked closely with the Expert Mechanism and contributed to its final study on indigenous peoples and the right to participate in decision-making. He participated in two meetings: a regional consultation organized by the Asia Indigenous Peoples Pact, which members of the Expert Mechanism also attended, held in Thailand in January 2010; and an expert seminar convened by the Office of the United Nations High Commissioner for Human Rights (OHCHR), held in Geneva in March 2011. The study (A/HCR/EMRIP/2011/2) was presented at the fourth session of the Expert Mechanism, held in Geneva from 11 to 15 July 2011. The Special Rapporteur had also provided comments for the previous study of the Expert Mechanism, on the right of indigenous peoples to education.

12. Since assuming his mandate, the Special Rapporteur has attended each annual session of the Permanent Forum and the Expert Mechanism and has participated in the discussion of the substantive issues under consideration. During those sessions, he developed the practice of holding parallel meetings with indigenous peoples and organizations, which have provided an invaluable opportunity for representatives of indigenous peoples and organizations from around the world to raise their specific situations and concerns in a manner that complements the more general discussions of indigenous issues by the Permanent Forum and Expert Mechanism. During the sessions, the Special Rapporteur also met with representatives of various States and

United Nations agencies to discuss opportunities for collaboration and specific cases concerning indigenous peoples.

13. In addition to cooperating with the Expert Mechanism and the Permanent Forum, the Special Rapporteur has welcomed opportunities to join efforts with a range of United Nations, regional and specialized bodies on matters concerning indigenous peoples. He has provided observations on initiatives of the United Nations Development Programme (UNDP), OHCHR, the World Bank, the World Intellectual Property Organization (WIPO) and the Pan American Health Organization. This coordination is important, as the Special Rapporteur promotes awareness of indigenous issues and programmatic action that is conducive to mainstreaming those issues and to effectively implementing standards of indigenous rights as affirmed in relevant international instruments.

14. The Special Rapporteur has continued to exchange information with the Inter-American Commission on Human Rights on cases of alleged violations of the rights of indigenous peoples in the Americas, in an attempt to ensure coordinated efforts and avoid unnecessary duplication. He has also confirmed his willingness to cooperate with the Working Group on Indigenous Populations of the African Commission on Human and Peoples' Rights in the future.

III. Areas of work

15. The Special Rapporteur has engaged in a range of activities to monitor the human rights conditions of indigenous peoples worldwide and promote steps to improve those conditions in line with relevant international standards, including the United Nations Declaration on the Rights of Indigenous Peoples. He has tried to develop work methods oriented towards building a constructive dialogue with Governments, indigenous peoples, non-governmental organizations, relevant United Nations agencies and others in order to address challenging issues and situations and build on advances already made. The various activities carried out in this spirit can be described, as already indicated, as falling within four, interrelated spheres of activity: promoting good practices, country reports, cases of alleged human rights violations and thematic studies.

A. Promoting good practices

16. The Special Rapporteur has worked to advance legal, administrative and programmatic reforms at the national and international levels in accordance with the Declaration and other relevant international instruments. Often, such reforms are major, complex undertakings requiring strong commitment, both financial and political, on the part of Governments and international entities, as well as close cooperation with indigenous peoples.

1. Promoting good practices at the national level

17. During the course of his work, the Special Rapporteur has been asked to provide assistance with constitutional and legislative reform initiatives aimed at harmonizing national frameworks with relevant international standards.

18. Shortly after assuming his mandate in May 2008, the Special Rapporteur was asked by indigenous organizations and the President of the Constituent Assembly of Ecuador, as part of the programme of technical assistance provided by UNDP in the country, to provide technical assistance with the constitutional revision process. The Special Rapporteur visited Ecuador and submitted a number of observations to the Government in the light of relevant international norms (A/HRC/9/9/Add.1, para. 502). Ecuador's new constitution was approved by referendum in September 2008 with significant provisions affirming indigenous peoples' collective rights.

19. The Special Rapporteur has continued to monitor the implementation by Ecuador of those reforms and subsequent legislation and, in 2010, presented to the Council at its fifteenth session his observations on progress made and challenges remaining with regard to implementing the constitutional guarantees for indigenous people in Ecuador (A/HRC/15/37/Add.7). Furthermore, he has provided comments on various drafts of legislation currently under consideration by the National Assembly of Ecuador to coordinate indigenous customary justice systems with the national justice system, in accordance with related provisions of the Constitution.

20. Similarly, in April 2009, the Special Rapporteur submitted a report to the Government of Chile outlining and analysing the international norms on the duty to consult indigenous peoples in relation to the constitutional reform process in Chile (A/HRC/12/34/Add.6, appendix A).

21. In July 2010, the Special Rapporteur provided an analysis of international standards relevant to the development in Colombia of a law or regulation on the duty to consult with indigenous peoples and Afro-Colombian communities on matters affecting them. His input was part of an initiative launched by OHCHR at the request of an advisory group on the matter of the Ministry of Interior and Justice of Colombia.

22. Likewise, over the course of several weeks in February 2011 the Special Rapporteur provided observations on the initiative of the Government of Guatemala to regulate a procedure for consultation with indigenous peoples.

23. Additionally, at the request of the Government of Suriname and indigenous and tribal peoples, the Special Rapporteur provided observations and recommendations on a process to develop legislation to secure indigenous and tribal peoples' rights to lands and resources, in the light of binding judgments issued in this connection by the Inter-American Court of Human Rights (A/HRC/18/35/Add.7). The observations and recommendations were based in part on information gathered during a visit to Suriname in March 2011.

24. In December 2008, the Special Rapporteur attended a ceremony in Awas Tingni, Nicaragua, during which the Government handed over to the indigenous community the long-awaited title to its ancestral lands, as required by a 2001 judgement of the Inter-American Court of Human Rights. He commended the Government of Nicaragua for taking steps to implement the judgement, and has continued discussions with the Government to encourage progress towards securing the rights to land and resources of other indigenous communities in that country.

2. Promoting good practices by international institutions and authorities

25. The Special Rapporteur has sought to promote decisions, programmatic reforms and initiatives by international actors, at both the global and regional levels,

and to strengthen, mainstream and advance implementation of international standards concerning the rights of indigenous peoples.

26. In July 2011, the Special Rapporteur testified as an expert witness before the Inter-American Court of Human Rights in the case *Sarayaku v. Ecuador*, regarding the principles of consultation and free prior and informed consent.

27. In May 2011, the Special Rapporteur gave the keynote speech at a session in Geneva of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore of WIPO, which is in the process of developing an international legal instrument on traditional knowledge, genetic resources and traditional cultural expressions.

28. In February 2011, the Special Rapporteur provided extensive observations on the draft guidelines of UNDP on consultation with indigenous peoples in the context of activities to reduce emissions from deforestation and forest degradation. Also in February 2011, he contributed to the development of a regional intercultural health policy by the Pan American Health Organization during a special meeting convened in Washington, D.C.

29. In January 2011, in Paris, he participated in the meeting of a working group of State delegates to the Organization for Economic Cooperation and Development (OECD), providing comments to focus attention on indigenous issues in the process of updating the *OECD Guidelines for Multinational Enterprises*.

30. At various times during the past year, the Special Rapporteur has provided comments to the International Finance Corporation of the World Bank Group during the Corporation's review of its performance standard No. 7, on indigenous peoples, including by meeting with officials of the Corporation and providing written observations on drafts of the performance standard.

31. In November 2010, the Special Rapporteur participated in a seminar in Geneva on land and human rights hosted by OHCHR, at which he provided information on and analysis of the particular human rights concerns of indigenous peoples in relation to lands.

32. The Special Rapporteur participated in seminars on the United Nations Declaration on the Rights of Indigenous Peoples organized by OHCHR in Peru, in October 2008, in Nicaragua, in June 2009, and in Trinidad and Tobago, in December 2009.

33. The Special Rapporteur has been collaborating with UNDP to produce a resource guide on indigenous peoples' rights for UNDP staff and others working on indigenous issues.

34. Additionally, the Special Rapporteur has cooperated with the World Bank. On 3 June 2008, he was the featured speaker at a seminar on "Advancing indigenous rights and development in Latin America and the Caribbean", held in Washington, D.C., at which he focused on the role of the World Bank in relation to various challenges and initiatives concerning indigenous peoples. The Special Rapporteur continues to maintain contact with representatives of the World Bank to explore ways of coordinating further with a view to advancing indigenous peoples' rights through the Bank's programmes.

3. Promoting support for the United Nations Declaration on the Rights of Indigenous Peoples

35. Another important way in which good practices can be promoted among both national and international entities is by advancing a policy of commitment to the rights enshrined in the United Nations Declaration on the Rights of Indigenous Peoples. To that end, the Special Rapporteur has actively encouraged support for the Declaration by those States that did not vote in favour of its adoption by the General Assembly in 2007. In recent years, he has welcomed the reversal of positions by Australia, Canada, New Zealand and the United States, the four States that had cast votes against the Declaration. He has been pleased to observe that Colombia and Samoa, States that had abstained from the vote, have since declared their support for the Declaration. The Special Rapporteur has devoted sections of his thematic reports to further analysis of the Declaration and its implementation.

36. The Special Rapporteur has sought to promote awareness of and action in accordance with the Declaration through a number of activities. In June 2011, he testified at a hearing of the United States Senate Committee on Indian Affairs entitled "Setting the standard: the domestic policy implication of the United Nations Declaration on the Rights of Indigenous Peoples". In April 2011, he gave the keynote address at the biennial conference of the New South Wales Aboriginal Land Council in Australia, at which the Land Council discussed the Declaration as a benchmark for major aspects of its work. Additionally, he gave a presentation on the Declaration to representatives of various United Nations agencies in a seminar organized by UNDP in New York, on 20 May 2009, at which he emphasized the role of United Nations agencies and programmes in implementing the Declaration.

4. Other measures to promote good practices

37. Participation in seminars or conferences involving indigenous peoples, experts, Government representatives and other actors has been an important means by which the Special Rapporteur has sought to promote good practices.

38. In March 2011, the Special Rapporteur gave the keynote address at an expert workshop in Berlin convened by the Federal Ministry on Economic Cooperation and Development of Germany, concerning German development cooperation in Africa and Asia.

39. In May 2010, the Special Rapporteur participated in a seminar on multiculturalism and the oil and gas industry in Latin America and the Caribbean in Cartagena, Colombia, organized by the Regional Association of Oil, Gas and Biofuels Sector Companies in Latin America and the Caribbean. The seminar provided an opportunity for dialogue with representatives of oil and gas companies, as well as with academics and members of civil society, on the obligations of private companies to respect international standards regarding indigenous peoples' rights.

40. The Special Rapporteur participated in a seminar on indigenous rights, held in Jakarta on 16 and 17 March 2009, sponsored by the National Human Rights Commission of Indonesia and the Indigenous Peoples' Alliance of the Archipelago. At the seminar, the Human Rights Commission and the Peoples' Alliance announced an agreement on a joint programme to address indigenous issues — a good example of coordination between a State's independent human rights commission and a major indigenous organization.

41. The Special Rapporteur also participated in a meeting of experts held in October 2009 in Sitges, Spain, and sponsored by the non-governmental organizations Kreddha and the United Nations Educational, Scientific and Cultural Organization Centre of Catalonia, at which the participants analysed sources of conflicts arising from extractive activities carried out by companies in indigenous territories and possible ways of preventing and resolving such conflicts. The discussions served as a valuable contribution to the report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people submitted to the Human Rights Council at its fifteenth session (A/HRC/15/37).

42. The Special Rapporteur visited Australia to attend a meeting entitled "The Sixtieth Anniversary of the Universal Declaration on Human Rights: The Situation of Human Rights and Fundamental Freedoms of the Aboriginal and Torres Strait Islander People of Australia", organized by the Foundation for Aboriginal and Islander Research Action and held in Canberra in December 2008. The Special Rapporteur had the opportunity to meet informally with various governmental representatives, marking the beginning of a constructive dialogue in preparation for his official mission to Australia in August 2009.

43. In an innovative initiative by an indigenous government, the Navajo Nation in the United States has established the Navajo Nation Human Rights Commission. In December 2008, the Special Rapporteur attended a human rights orientation organized by the Commission for members of the Navajo Nation Council and engaged in a discussion with the Commission and Council members on ways to advance the human rights of Navajo people through the use of international human rights mechanisms.

44. In October 2008, the Special Rapporteur attended the sixty-fifth convention of the National Congress of American Indians. He gave a presentation on the use of international standards to strengthen the protections for the rights of indigenous peoples in the United States. The National Congress is a coalition of over 250 indigenous nations in the United States that works to inform decisions of the Government of the United States and Congress that affect indigenous peoples' interests.

45. In October 2008, the Special Rapporteur, together with the Special Rapporteur on violence against women, its causes and consequences, participated in a regional consultation of non-governmental organizations on violence against indigenous women in Asia and the Pacific. The consultation was organized by the Asia Pacific Forum on Women, Law and Development and was held in New Delhi.

B. Country reports

46. Over the past three years, the Special Rapporteur has issued various reports on the human rights situations of indigenous peoples in various countries. Those reports include conclusions and recommendations aimed at strengthening good practices, identifying areas of concern and improving the human rights conditions of indigenous peoples in specific countries or regions. The reporting process typically involves a visit to the country under review, including to the capital and selected places of concern, during which the Special Rapporteur interacts with Government representatives, indigenous communities from different regions and a cross-section

of civil society working on issues of relevance to indigenous peoples. The visits take place with the consent and cooperation of the respective Government.

47. The Special Rapporteur has conducted visits to and reported on Brazil (A/HRC/12/34/Add.2); Nepal (A/HRC/12/34/Add.3); Botswana (A/HRC/15/37/Add.2); Australia (A/HRC/15/37/Add.4); the Russian Federation (A/HRC/15/37/Add.5); the Sápmi region (the traditional territory of the Sami people) in Norway, Sweden and Finland (A/HRC/18/35/Add.2); the Congo (A/HRC/18/35/Add.5); and New Caledonia (France) (A/HRC/18/35/Add.6). He has also conducted follow-up visits to Chile (A/HRC/12/34/Add.6), Colombia (A/HRC/15/37.Add.3) and New Zealand (A/HRC/18/35/Add.4) to evaluate the progress made in those countries in implementing the recommendations made by the Special Rapporteur's predecessor.

48. In 2011, the Special Rapporteur will visit Argentina and, early in 2012, the United States. He has also received invitations from the Governments of Panama and El Salvador to evaluate the situations of indigenous peoples in those countries, and welcomes those invitations. The Special Rapporteur has outstanding requests to visit Bangladesh, Cambodia, Malaysia, Indonesia and Papua New Guinea, which he hopes will be considered favourably.

C. Specific cases of alleged human rights violations

49. Another principal area of the Special Rapporteur's work involves responding, on an ongoing basis, to allegations of human rights violations in specific cases. Summaries of letters sent by the Special Rapporteur communicating his concerns over particular situations and responses received from Governments, together with the Special Rapporteur's observations and recommendations, are included in his communications to and from Governments (A/HRC/18/35/Add.1, A/HRC/15/37/Add.1 and A/HRC/12/26/Add.1).

50. The Special Rapporteur has received information about cases of alleged human rights violations in countries on every continent and, in response to them, has sent numerous communications to Governments about these situations. Complaints received have related to common issues that affect indigenous peoples throughout the world, including the denial of the rights of indigenous peoples to their lands, territories and natural resources; violations of the right to consultation and to free, prior and informed consent, especially with regard to natural resource extraction or the eviction of indigenous communities; threats or violence against indigenous individuals and communities, including human rights defenders; concerns about constitutional or legislative reforms in indigenous subject matter; issues related to the recognition of indigenous justice systems; and the situation of indigenous peoples in isolation.

51. Given the limited resources available, it is impossible for the Special Rapporteur to respond to every case that comes to his attention. However, he frequently acts on detailed and credible information that presents a serious situation falling within his mandate in which intervention has a reasonable chance of having a positive impact, either by drawing needed attention to the situation or by prompting Government authorities or other actors to take corrective action. Alternatively, he may take action where the situation is representative of, or connected to, a broader pattern of human rights violations against indigenous peoples. He has responded to allegations of human rights violations from a wide range of regions and countries.

52. The Special Rapporteur aims to engage actively with States, indigenous peoples and others to closely monitor and evaluate situations, identify underlying causes of immediate problems, promote specific action that builds on advances already made and make recommendations that are practical, founded on available knowledge and in accordance with relevant human rights standards.

53. Therefore, for some cases examined, the Special Rapporteur has developed detailed observations and recommendations that he has communicated to Governments, regarding the action which, in his view, States and, as appropriate, other interested parties should take to address those situations, within the framework of the relevant international standards. He will continue to engage with States about these specific situations and hopes that the dialogue to date has been useful for the Governments and indigenous peoples concerned.

54. Certain communications received by the Special Rapporteur contain allegations of specific violations of human rights of indigenous peoples that warrant deeper analysis. For these matters, he has carried out site visits to countries as part of his examination of those cases. As a result of the visits, he has issued detailed observations with analyses and recommendations, in the hope that they will be of use to the Governments and indigenous peoples concerned in their efforts to address the problems raised.

55. In that connection, in April 2011 the Special Rapporteur travelled to Costa Rica to examine the situation of indigenous peoples affected by the El Diquís hydroelectric project. The Special Rapporteur provided the Government and indigenous stakeholders with his observations and recommendations on the situation (A/HRC/18/35/Add.8).

56. Similarly, in June 2010, the Special Rapporteur visited Guatemala to discuss the implementation of the principles of consultation with indigenous peoples in the country, particularly in relation to extractive industries, with a special focus on the situation of indigenous peoples affected by the Marlin mine in the municipalities of San Miguel Ixtahuacán and Sipacapa (A/HRC/18/35/Add.3).

57. In February 2009, the Special Rapporteur travelled to Panama to examine the situation of the indigenous communities affected by the construction of a hydroelectric project on the Changuinola River in Panama (A/HRC/12/34/Add.5). In June 2009, he went to Peru immediately following the confrontations between indigenous peoples and the police in Bagua, Peru, in order to examine first hand the human rights issues (A/HRC/12/34/Add.8).

58. During his visit to Australia in August 2009, the Special Rapporteur followed up on earlier communications concerning the effects on indigenous rights of the Northern Territory Emergency Response of the Government of Australia. He prepared a special report containing his observations on that matter, which was annexed to his report on the situation of indigenous peoples in Australia (A/HRC/15/37/Add.4, appendix B.)

59. The Special Rapporteur believes that his ability to intervene rapidly in situations of crisis involving indigenous peoples, such as the situation of Bagua in Peru, has proved to be an effective use of his mandate, allowing him to play a key role in the resolution, mitigation or improvement of situations of crisis involving indigenous peoples.

60. On occasion, the Special Rapporteur has issued media or other public statements in response to issues of immediate concern arising in specific countries. He has issued public statements on the following issues: Government reactions to protests by the Rapa Nui people on Easter Island (Chile); concerns surrounding a hunger strike by Mapuche indigenous prisoners protesting charges brought against them under an anti-terrorism law (Chile); protests by indigenous peoples against legislation on mining (Panama); laws and policies regarding consultation with indigenous peoples (Peru); and concerns over legislation adopted by the State of Arizona (United States) giving the police the power to detain suspected illegal immigrants and the effects of this legislation on indigenous peoples in the United States/Mexico border region.

D. Thematic studies

61. During the first three years of his mandate, the Special Rapporteur sought to identify common issues or matters of concern to indigenous peoples throughout the world and to address those concerns with informed analysis and recommendations. His analyses of thematic issues have built upon his examination of national situations and cases, and have been further informed by his experiences in the promotion of good practices. In each of his annual reports to the Human Rights Council, he has examined key issues, including the following: the significance of the United Nations Declaration on the Rights of Indigenous Peoples; the duty of States to consult with and obtain the consent of indigenous peoples before adopting measures that affect them; the responsibility of corporations to respect the rights of indigenous peoples; and, most recently, and building on the previous themes, issues related to extractive industries operating in or near indigenous peoples' traditional territories.

IV. Overview of key thematic issues examined[1]

A. United Nations Declaration on the Rights of Indigenous Peoples

1. Overview

62. During the last three decades, the demands of indigenous peoples across the world have led to the gradual emergence of a common body of opinion on the rights of these peoples based on long-standing principles of international human rights law and policy. The emergence of this common understanding has further been reflected in and supported by constitutional, legislative and institutional reforms at the national level. The adoption by the General Assembly in 2007 of the United Nations Declaration on the Rights of Indigenous Peoples is the most prominent manifestation of this common body of opinion, encapsulating as it does a widely shared understanding of the rights of indigenous peoples that has been building over decades from a foundation of existing sources of international human rights law.

63. The Declaration's preamble stresses the essentially remedial purpose of the instrument. Far from affirming special rights per se, the Declaration aims at

[1] This section summarizes the Special Rapporteur's examination of the United Nations Declaration on the Rights of Indigenous People in A/HRC/9/9 (paras. 18-43).

repairing the ongoing consequences of the historical denial of the right to self-determination and other basic human rights that are affirmed in international instruments of general applicability. In this sense, the Declaration does not create new or special rights separate from the fundamental human rights that are deemed of universal application, but rather elaborates upon these fundamental rights in the specific cultural, historical, social and economic circumstances of indigenous peoples.

64. The Declaration affirms in its article 3 the right of indigenous peoples to self determination in a way that is deemed compatible with the principle of territorial integrity and political unity of States. On these grounds, the Declaration provides a detailed list of rights that constitute "the minimum standards for the survival, dignity and well-being of indigenous peoples of the world" (art. 43). The Declaration reaffirms basic individual rights to equality and non-discrimination, life and personal integrity and freedom, nationality and access to justice; and it calls for special attention to specific rights and needs of indigenous elders, women, youth, children and persons with disabilities.

65. At the same time, the Declaration affirms rights of a collective character in relation to self-government and autonomous political, legal, social and cultural institutions; cultural integrity, including cultural and spiritual objects, languages and other cultural expressions; lands, territories and natural resources; social services and development; treaties, agreements and other constructive arrangements; and cross-border cooperation. The Declaration also reflects the common understanding that indigenous peoples' self-determination ordinarily involves not only the exercise of autonomy but also a participatory engagement and interaction with the larger societal structures in the countries in which indigenous peoples live. Hence the Declaration recognizes indigenous peoples' right to participate in the political, economic, social and cultural life of the State and to be consulted in relation to decisions affecting them, with the objective of obtaining their prior, free and informed consent.

2. Normative and legal significance

66. On too many occasions in his work, the Special Rapporteur has come across efforts by States and other actors to diminish the normative weight of the Declaration by describing it as an instrument that is not legally binding. While this point can be conceded, a solid understanding of the normative significance and legal obligations related to the Declaration does not end there.

67. Whatever its precise legal significance, the Declaration has a significant normative weight grounded in its high degree of legitimacy. This legitimacy is a function of not only the fact that it has been formally endorsed by an overwhelming majority of Member States (including by the four States that had voted against its adoption, see para. 35 above) but also the fact that it is the product of years of advocacy and struggle by indigenous peoples themselves. The Declaration is the result of a cross-cultural dialogue that has taken place over decades and in which indigenous peoples have played a leading role. The norms of the Declaration substantially reflect indigenous peoples' own aspirations, which after years of deliberation have come to be accepted by the international community. The Declaration's wording, which has been endorsed by Members States, explicitly manifests a commitment to the rights and principles embodied in the Declaration. It

is simply a matter of good faith that States adhere to that expression of commitment to the norms that indigenous peoples themselves have advanced.

68. Furthermore, even though the Declaration itself is not legally binding in the same way that a treaty is, the Declaration reflects legal obligations that are related to the human rights provisions of the Charter of the United Nations, various multilateral human rights treaties and customary international law. The Declaration builds upon the general human rights obligations of States and is grounded in fundamental human rights principles such as non-discrimination, self-determination and cultural integrity, which are incorporated into widely ratified human rights treaties, as evident in the work of United Nations treaty bodies. In addition, core principles of the Declaration can be seen to connect to a consistent pattern of international and State practice, and hence, to that extent, they reflect customary international law.

69. Additionally, the Declaration reflects the existing international consensus regarding the individual and collective rights of indigenous peoples in a way that is coherent with and expands upon the provisions of the Convention on Indigenous and Tribal Peoples (Convention No. 169) of the International Labour Organization, as well as with the interpretations of other human rights instruments by international bodies and mechanisms. As the most authoritative expression of this consensus, the Declaration provides a framework of action for the full protection and implementation of these rights.

70. Thus, the significance of the Declaration is not to be diminished by assertions of its technical status as a resolution that is not legally binding. In the view of the Special Rapporteur, implementation of the Declaration should be regarded as a political, moral and, yes, legal imperative.

3. Measures needed to implement the Declaration

71. On various occasions the Special Rapporteur has offered comments on minimum steps that he considers must be taken in order to move forward with the implementation of the Declaration, beyond its formal endorsement by States.

72. State officials and indigenous leaders should receive training on the Declaration and the related international instruments and on practical measures to implement the Declaration. In addition, seminars and conferences should be organized at the national and local levels to bring together State officials and indigenous leaders to develop strategies and initiatives for implementation, including measures to address historical grievances, in the spirit of cooperation and reconciliation that the Declaration represents.

73. States should engage in comprehensive reviews of their existing legislation and administrative programmes to identify where they may be incompatible with the Declaration. This would include a review of all laws and programmes touching upon indigenous peoples' rights and interests, including those related to natural resource development, land, education and administration of justice. On the basis of such a review, necessary legal and programmatic reforms should be developed and implemented in consultation with indigenous peoples.

74. States should be committed to devoting significant human and financial resources to take the measures required to implement the Declaration. Such measures typically include the demarcation or return of indigenous lands, the

development of culturally appropriate educational programmes, support for indigenous self-governance institutions and the many other measures contemplated by the Declaration.

75. The United Nations system and the international community should, as a matter of the utmost priority, develop programmes to provide technical and financial assistance to States and indigenous peoples to move forward with these and related steps to implement the Declaration.. In some instances, existing United Nations and international cooperation programmes may also have to be reformed so that they are in line with the goals and objectives of the Declaration.

76. To some extent, these minimum steps to implement the Declaration are already being taken by some States, in some cases with the backing of United Nations agencies or international cooperation programmes. The goal is for these initiatives to take root much more broadly than they have to date and for experiences to be shared among all relevant stakeholders in order to strengthen these initiatives.

B. The duty to consult[2]

1. Normative grounds and general character

77. The duty of States to consult with indigenous peoples on decisions affecting them finds prominent expression in the United Nations Declaration on the Rights of Indigenous Peoples and is firmly rooted in international human rights law. That duty is referenced throughout the Declaration in relation to particular concerns and is affirmed as an overarching principle in article 19, which provides the following: "States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them."

78. Like the Declaration, the Convention on Indigenous and Tribal Peoples requires States to consult with indigenous peoples in good faith with the objective of achieving their agreement or consent on those aspects of management schemes or projects that affect them, and calls upon States to carry out consultations with indigenous communities in connection with a variety of contexts. The duty of States to effectively consult with indigenous peoples is also grounded in the core human rights treaties of the United Nations, including the International Convention on the Elimination of All Forms of Racial Discrimination and the International Covenant on Civil and Political Rights. At the regional level, the duty to consult arises from the obligations assumed by States under the American Convention on Human Rights, as affirmed by the Inter-American Court of Human Rights in a series of cases.

79. Most fundamentally, the duty to consult derives from the overarching right of indigenous peoples to self-determination and from related principles of democracy and popular sovereignty. It responds to the aspirations of indigenous peoples worldwide to be in control of their own destinies under conditions of equality and to participate effectively in decision-making processes that affect them. Consistent

[2] This section summarizes the Special Rapporteur's examination of the duty to consult in A/HRC/12/34 (paras. 36-57 and 61-74).

with such principles, the duty of States to consult with indigenous peoples in decisions affecting them is aimed at reversing the historical pattern of excluding indigenous people from decision-making processes in order to avoid imposing important decisions on them in the future and to allow them to flourish as distinct communities on lands to which their cultures remain attached.

80. As a general matter, decisions of the State should be made through democratic processes in which the public's interests are adequately represented. However, these normal democratic and representative processes usually do not work adequately to address the concerns that are particular to indigenous peoples, who are typically marginalized from the political sphere. The duty of States to consult with indigenous peoples and its various normative components are premised on widespread acknowledgment, as manifested in the Declaration, of indigenous peoples' distinctive characteristics and specific rights and on the need for special measures to address their disadvantaged conditions.

2. The duty to consult and the objective of obtaining consent

81. The duty to consult is a procedural obligation that arises whenever indigenous peoples' substantive rights stand to be affected by a particular action. It should be noted that the duty to consult is not limited to circumstances in which a proposed measure will or may affect an already recognized right or legal entitlement at the national level, for example, rights over traditional lands and territories.

82. The specific characteristics of the consultation procedure that is required by the duty to consult will necessarily vary depending on the nature of the proposed measure and the scope of its impact on indigenous peoples. For example, constitutional or legislative reform measures that concern or affect all the indigenous peoples of a country will require appropriate consultation and representative mechanisms that will in some way be open to and reach all indigenous peoples. By contrast, measures that affect particular indigenous peoples or communities, such as initiatives for extracting natural resources in their territories, will require consultation procedures focused on the interests of and engagement with the affected groups.

83. The character of the consultation procedure and its object are also shaped by the nature of the right or interest at stake for the indigenous peoples concerned and the anticipated impact of the proposed measure. Necessarily, the strength of the objective of achieving consent varies according to the circumstances, the indigenous peoples' rights and the interests involved. A significant, direct impact on indigenous peoples' lives establishes a strong presumption that the proposed measure should not go forward without indigenous peoples' consent. In certain contexts, that presumption may harden into a prohibition of the measure or project in the absence of indigenous consent.

84. The Declaration identifies two situations in which it is necessary to obtain the consent of the indigenous peoples concerned prior to moving forward with the proposed initiative: situations involving the removal of an indigenous group from its traditional lands (art. 10) and situations involving the storage of hazardous materials in indigenous peoples' lands (art. 29). The Special Rapporteur would add situations involving the establishment of natural resource extraction projects within indigenous peoples' lands and other situations in which projects stand to have a

significant social or cultural impact on the lives of the indigenous peoples concerned.

85. Still, in all cases in which indigenous peoples' particular interests are affected by a proposed measure, obtaining their consent should, to some degree, be an objective of the consultation. The principles of good faith imply an effort to build dialogue in which both States and indigenous peoples are to work towards consensus and try in earnest to arrive at a mutually satisfactory agreement. All parties should be willing to listen and compromise on their positions and defend their legitimate interests and arrive at agreements that are binding on all.

86. Nonetheless, affected indigenous peoples could be justified in withholding their consent in relation to a proposed initiative, and the proposed initiative should indeed not move forward without such consent, if the State has not demonstrated that the rights of affected indigenous peoples will be adequately protected under the proposed project or if the State has not adopted adequate measures to mitigate any adverse impacts of the proposed project.

3. Elements of confidence-building conducive to consensus

87. A good faith effort towards consensual decision-making requires that States endeavour to create a climate of confidence with indigenous peoples that allows for a productive dialogue. This is particularly important in relation to indigenous peoples given their historic exclusion from decision-making processes and consequent lack of trust in State institutions. Furthermore, indigenous peoples are typically disadvantaged in terms of political influence, financial resources, access to information and relevant education in comparison to State institutions or private parties, such as companies, that are their counterparts in the consultations.

88. In order to achieve a climate of confidence and mutual respect for the consultations, the consultation procedure itself should be the product of consensus. The Special Rapporteur has observed that, in many instances, consultation procedures are not effective and do not enjoy the confidence of indigenous peoples because the affected indigenous peoples were not adequately included in the discussions leading to the design and implementation of the consultation procedures. These discussions should be initiated at the earliest stages of the design of the proposed initiative and certainly, in the case of natural resource extraction projects, before the State has entered into any agreements with third parties, such as funding institutions or companies, in relation to the proposed project. Additionally, States must duly address the imbalance of power by ensuring arrangements by which indigenous peoples have the financial, technical and other assistance they need, and they must do so without using such assistance to leverage or influence indigenous positions in the consultations.

89. The building of confidence and the possibility of genuine consensus also depends on a consultation procedure in which indigenous peoples' own institutions of representation and decision-making are fully respected. Indigenous peoples may also need to develop or revise their own institutions, through their own decision-making procedures, in order to set up representative structures to facilitate the consultation processes. The Special Rapporteur has noted that the failure of indigenous groups to clarify their representative organization structures can confuse and slow down the consultation process.

90. In cases involving natural resource exploitation or development projects affecting indigenous lands, in order for the indigenous peoples concerned to make free and informed decisions about the project under consideration, it is necessary that they are provided with full and objective information about all aspects of the project that will affect them, including the impact of the project on their lives and environment. In this connection, it is essential for the State to carry out, with the participation of the indigenous groups concerned, environmental and social impact studies so that the full expected consequences of the project can be known.

91. Furthermore, a consensus-driven consultation process in such contexts should not only address measures to mitigate or compensate for adverse impacts of the project, but also explore and arrive at means of equitable benefit-sharing in a spirit of true partnership.

C. Corporate responsibility with respect to the human rights of indigenous peoples[5]

92. The international community has reached a certain level of consensus that business enterprises have a responsibility to respect human rights. This consensus is reflected in the many regulatory and self-regulatory frameworks governing corporate responsibility that have appeared in recent decades, at both the international and national levels. The guiding principles on business and human rights (A/HRC/17/31) of the Special Representative were endorsed by the Human Rights Council at its seventeenth session (Council resolution 17/4). Beyond the question of their legal status, the various existing instruments and mechanisms on corporate responsibility clearly reflect the existence of social expectations with regard to corporate responsibility and the need to exercise it in relation to human rights.

93. A central pillar of this normative framework is that companies have a general duty to respect international human rights standards within the context of the due diligence that must govern their activities. Due diligence is not limited to respect for the national regulations of States in which companies operate, which are inadequate in many cases, but should be governed by the international standards that are binding on those States and on the international community as a whole. Due diligence also means that companies must not contribute to States' failure to meet their international obligations in relation to indigenous rights, nor should they endeavour to replace the role of States in the fulfilment of those obligations. The Special Rapporteur considers the following to be necessary elements of the due diligence of companies whose activities affect indigenous peoples.

1. Recognition of indigenous peoples

94. One of the fundamental difficulties facing companies that operate in indigenous territories, or whose operations affect those territories, is the absence of formal recognition of indigenous peoples by the State in which they live, or recognition limited solely to certain groups. Nevertheless, a generally accepted principle of international human rights law holds that the existence of distinct

[5] This section summarizes the Special Rapporteur's discussion of corporate responsibility in A/HRC/15/37 (paras. 26-91).

ethnic, linguistic or religious groups, including indigenous peoples, can be established by objective criteria and cannot depend on a unilateral decision by a State.

95. Businesses cannot use limited recognition, or absence of explicit recognition, of indigenous peoples in the countries in which they operate as an excuse not to apply the minimum international standards applicable to indigenous peoples, including in cases where States are opposed to the application of such standards. Due diligence therefore requires that companies identify in advance the existence of indigenous peoples potentially affected by their activities and how they might be affected by such activities.

2. Rights to land, territories and natural resources

96. A second feature of the due diligence incumbent on companies whose activities have a potential impact on indigenous peoples is the identification of indigenous ownership or possession and use of land, territories and natural resources, a question of vital importance to the effective enjoyment of human rights by indigenous peoples. The lack of official recognition of land or resource rights by the State does not constitute adequate grounds for a company's failure to respect indigenous peoples' rights to land in accordance with international standards. Due diligence therefore requires that companies conduct an independent assessment of the rights to which indigenous people may lay claim in accordance with the criteria laid down in international instruments.

97. Companies should bring to bear an intercultural understanding that goes far beyond mere legal considerations. International standards have highlighted the special relationship existing between indigenous peoples and their traditional territories, which form the basis of their distinct identities and cultures. Companies must understand that, independent of the rights over their lands or resources to which they may lay claim under national law, indigenous peoples have maintained and continue to maintain ties to their traditional territories. Moreover, these ties are collective, and therefore go far beyond the individual rights of the members of these groups.

98. Companies should also put in place special guarantees of compensation for the removal of indigenous communities and peoples from their lands, including with regard to projects that involve the acquisition of indigenous lands held under individual titles. In such cases, international standards require that alternatives that limit or avoid such relocation be sought and that compensation in the form of other land be provided as a matter of priority.

3. The State's duty to consult and related corporate responsibilities

99. The principle of due diligence also requires that companies recognize the duty of States to consult indigenous peoples (and, in some cases, to obtain their consent) prior to the adoption of measures that may affect them directly and, in particular, in relation to projects that affect their traditional territories. Companies must not attempt to replace States in situations where international standards require States to bear direct responsibility for holding consultations; indeed, they must promote the full assumption by States of such responsibility. Furthermore, companies would fall short of their due diligence with respect to human rights if they agreed to proceed

with specific projects for which the State has failed to carry out an adequate consultation with indigenous peoples.

100. Without prejudice to the principle that States bear the main responsibility to consult, companies must respect the right of indigenous peoples to participate in decisions affecting them by ensuring adequate mechanisms for consultation and dialogue. Here, the purpose of consultations with indigenous peoples should be to seek consensus on key aspects such as identification of the potentially negative impact of the activities, measures to mitigate and compensate for such impact, and mechanisms for sharing the benefits derived from the activities.

4. Impact studies and compensation measures

101. Impact studies and the definition of appropriate measures to compensate for any negative impact identified are, by definition, related to the consultation process. In recognition of indigenous peoples' right to the conservation and protection of their lands and environments, international standards and practice now require that social and environmental impact studies be conducted as a specific guarantee for the protection of indigenous rights, in particular with regard to projects involving investment in or the development, exploration or extraction of natural resources likely to affect those rights.

5. Benefit-sharing

102. Aside from being entitled to compensation for damages or mitigation measures for negative impacts, indigenous peoples have the right to share in the benefits arising from activities taking place on their traditional territories, especially in relation to natural resource development. Companies are bound by their duty to respect indigenous rights to establish mechanisms that ensure that indigenous peoples share in the benefits generated by the activities in question. Benefit-sharing should be regarded as a means of complying with a right, not as a charitable award or favour granted by the company in order to secure social support for the project or minimize potential conflicts. Consideration should be given to the development of benefit-sharing mechanisms that genuinely strengthen the capacity of indigenous peoples to establish and pursue their own development priorities and that help indigenous peoples to make their own decision-making mechanisms and institutions more effective.

D. Extractive industries operating in or near indigenous territories[4]

103. The impact that extractive industries have on indigenous peoples is a subject of particular concern to the Special Rapporteur. In several country-specific and special reports, and in his review of particular cases, he has examined various situations in which extractive industry activities generate effects that infringe upon indigenous peoples' rights. The Special Rapporteur aims to contribute to efforts to clarify and resolve the problems arising from the activities of extractive industries in relation to indigenous peoples. In 2011 the Special Rapporteur disseminated a questionnaire on natural resource extraction and development projects in or near

[4] This section summarizes the report of the Special Rapporteur's discussion of extractive industries in A/HRC/18/35.

indigenous territories to collect and understand views, concerns and recommendations on the issue.

I. Preliminary assessment of the responses to the questionnaire

104. The views communicated by indigenous peoples, Governments, businesses and other relevant stakeholders concerning the development of projects for extracting natural resources and energy-related projects in indigenous territories reveal that, despite a growing awareness of the need to respect the rights of indigenous peoples, many problems still remain. The responses of indigenous peoples' organizations and representatives, Governments and corporations reflect a clear understanding of the negative, even catastrophic, impact on the economic, social and cultural rights of indigenous peoples caused by irresponsible or negligent projects that have been or are being implemented in indigenous territories without proper guarantees or the involvement of the peoples concerned.

105. In addition, while many Governments are committed to and have demonstrated an awareness of the need to protect the rights of indigenous peoples, the responses to the questionnaire received by the Special Rapporteur from States, coupled with those received from other sources, also reflect a lack of consensus with regard to the extent of a State's duties concerning resource extraction and development projects and the means of ensuring such protection. In several responses, particularly those received from businesses, it was pointed out that Governments tend to distance themselves from the implementation of the outcomes of consultation procedures and other measures to safeguard the rights of indigenous peoples in the context of extractive operations and to act as mere regulators. The fact that States tended to delegate their protective role to business enterprises was repeatedly pointed out as a matter of concern, particularly in cases in which the State's regulatory frameworks regarding indigenous rights, including in relation to the protection of lands and resources, consultation and benefit-sharing, are insufficient or do not exist.

106. Another significant area that elicited divergent responses concerned the balance of costs and benefits of extractive development projects. Although responders were aware of the negative impact that extractive activities had had on the lives of indigenous peoples in the past, they expressed widely divergent perspectives about the incidence and value of actual or potential benefits from extractive industries, especially with regard to the future. In their responses to the Special Rapporteur's questionnaire, many Governments underscored the key importance of such activities for their economies. Many businesses shared the view that indigenous peoples could benefit from the activities of extractive industries.

107. For their part, indigenous peoples expressed considerable scepticism and, in many cases, outright rejection of the possibility of benefiting from extractive or development projects in their traditional territories. The vast majority of indigenous peoples, many of whom had direct experience of specific projects affecting their territories and communities, emphasized in their responses a perception of disenfranchisement, the impression that States and businesses were ignorant of the rights and concerns of indigenous peoples and constant insecurity in terms of their livelihoods in the face of encroaching extractive activities. These perceptions have led indigenous peoples to see no positive impact from these operations, which are seen more as a top-down imposition of decisions taken in collusion by the State and

corporations to protect their own interests than the result of negotiated decisions with their communities.

2. Proposed future plan of work of the Special Rapporteur

108. In the view of the Special Rapporteur, the lack of understanding of key issues among all actors concerned is a major barrier to the effective protection and realization of indigenous peoples' rights in the context of extractive development projects. That, coupled with the existence of numerous grey conceptual and legal areas, has invariably proved to be a source of social conflict. Comparative experiences provide ample examples of the eruption and escalation of such conflicts and the ensuing radicalization of positions. Where social conflicts erupt in connection with extractive or development plans in indigenous territories, everybody loses.

109. The responses to the Special Rapporteur's questionnaire demonstrate the need for change in the currents state of affairs if indigenous rights standards are to have a meaningful effect on State and corporate policies and action as they relate to indigenous peoples. An initial step towards such change would be the establishment of a common understanding among indigenous peoples, governmental actors, businesses enterprises and others. The Special Rapporteur is conscious of the complexities inherent in any effort to harmonize the various interests involved, as well as of the difficulties of bridging the contrasting viewpoints that currently exist.

110. However, the Special Rapporteur is persuaded of the need to reach a common understanding of the content and scope of the rights of indigenous peoples and of the implications of those rights for the future desirability or viability of extractive industry activities in or near indigenous territories, the nature of the responsibility of States to protect indigenous peoples' rights in this context, the actual or potential impact of extractive industries (both positive and negative) and related matters. Without such understanding, the application of indigenous rights standards will continue to be contested, indigenous peoples will continue to be vulnerable to serious abuses of their individual and collective human rights and extractive activities that affect indigenous peoples will continue to face serious social and economic problems.

111. The Special Rapporteur is committed, during the second term of his mandate, to working in coordination with other mechanisms, in particular the Expert Mechanism on the Rights of Indigenous Peoples of the Human Rights Council, to develop concrete and practical recommendations, elaborating on the implications of existing human rights standards, to help States, businesses and indigenous peoples navigate the difficult issues that arise when extractive industries operate in or near indigenous territories.

V. Conclusion

112. **The Special Rapporteur reaffirms his strong commitment to the mandate he holds, acknowledges with humility the responsibility it represents and thanks all those who have supported and continue to support him in this role. In particular, he gratefully acknowledges the trust that has been conferred upon him by the Human Rights Council and thanks OHCHR and its staff for their committed assistance. He also thanks the staff and affiliated researchers**

of the Support Project for the Special Rapporteur on the Rights of Indigenous Peoples, which is part of the Indigenous Peoples Law and Policy Program at the University of Arizona, United States. Finally, he thanks the many indigenous peoples, Governments, United Nations bodies and agencies, non-governmental organizations and others that have cooperated with him over the past three years to implement his mandate.

113. The Special Rapporteur is pleased to provide the General Assembly with the present report and looks forward to holding a dialogue with States about his work. Although he is encouraged by the positive developments that have taken place in many places, he remains concerned about the ongoing struggles for and violations of indigenous peoples' rights throughout the world. During the second term of his mandate, he will make the development of concrete measures to tackle these pressing problems a top priority by identifying good practices and workable models and building on advances already made. Through this work, he hopes to assist in the multifaceted efforts under way to achieve the future envisioned by the Assembly when it adopted the United Nations Declaration on the Rights of Indigenous Peoples in 2007, a future in which indigenous peoples' distinct identities and cultures are fully valued and in which they have the opportunity to control their own destinies, under conditions of equality, within the broader societies in which they live.

United Nations

A/66/289

General Assembly

Distr.: General
10 August 2011

Original: English

Sixty-sixth session
Item 69 (b) of the provisional agenda*
Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Independence of judges and lawyers

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the interim report of the Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul, submitted in accordance with Human Rights Council resolution 17/2.

* A/66/150.

11-44971 (E) 020911

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Interim report of the Special Rapporteur on the independence of judges and lawyers

Summary

The present report, submitted in accordance with Human Rights Council resolution 17/2, addresses the need to consider and integrate a gender perspective in the criminal justice system as a fundamental step towards allowing equal access to justice for women and men and in respect of the role to be played by judges and lawyers.

While the meaning, scope and impact of gender encompasses more than women's rights, this report focuses on the interlinkages of the independence and impartiality of judges, prosecutors and lawyers and the criminal justice system when dealing with women as victims, witnesses and offenders. The Special Rapporteur underlines the negative impacts of gender stereotypes and the importance of integrating a strong gender perspective in all aspects of the criminal justice system and its procedures. The historical and pervasive discriminatory position of women throughout the world compelled the Special Rapporteur to look at their specific treatment in the criminal justice system. Nevertheless, as the integration of a gender perspective means integrating both women and men's perspectives and needs, more should be done to properly understand and challenge all the impacts and effects that gender-based stereotypes, prejudices and discrimination have on both women and men in both their access to and engagement in the justice system as a whole and the criminal justice system in particular.

Applying a human rights-based approach is the best instrument with which to guide States and other international and national actors alike, and allow the development of laws, rules of procedures and jurisprudence that respect internationally, as well as nationally, recognized legal principles of equality between women and men and non-discrimination on the grounds of gender. The Special Rapporteur highlights the fact that development of training and continuing legal education programmes, particularly in international human rights law, is the cornerstone for developing the capacity of the judiciary to challenge gender stereotypes within and outside the criminal judicial system and provide the basis for more equal application of criminal legislation, and therefore for a more equal access to justice for women.

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I. Introduction

1. The present report is the second one submitted to the General Assembly by the Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul, since her appointment in June 2009. Her mandate was established in Commission on Human Rights resolution 1994/41 and renewed, most recently, in Human Rights Council resolution 17/2.

2. The Special Rapporteur and her predecessors have asserted that the independence of judges and lawyers lies at the core of the respect for the rule of law, the fight against impunity and the well-functioning of a democratic system. The independence of judges and lawyers is also essential for the protection and enforcement of human rights and for ensuring that there is no discrimination in the administration of justice.

3. The Special Rapporteur has chosen to analyse the topic of gender and its relevance for an independent judicial system. This analysis has been divided into two thematic approaches relevant to her mandate: one relating to gender and the administration of justice[1] and the other to gender in the criminal justice system.

4. This report focuses on the importance of integrating a gender perspective in the criminal justice system. It addresses the issues of the underrepresentation of women among judicial officers and the need to create and strengthen training and capacity-building programmes on international human rights law and jurisprudence, in particular gender equality and women's rights, for all judicial actors, as an important requisite for an independent and impartial judiciary (sect. III.B).

5. While it is important to note that the meaning, scope and impact of gender encompass more than women's rights, this report of the Special Rapporteur focuses on the interlinkages of the independence of judges and lawyers and the criminal justice system when dealing with women victims, witnesses or offenders, and underlines the negative impacts of gender-based stereotypes and discrimination and the importance of integrating a strong gender perspective in all aspects of the criminal justice system (sect. III.C, D and E).

II. Activities of the Special Rapporteur

6. The activities carried out by the Special Rapporteur from 1 January 2010 to 15 March 2011 are outlined in the recent report she submitted to the Human Rights Council.[2] Since then, the Special Rapporteur has participated in various conferences and meetings, taken action in response to communications and allegations received from individuals and organizations, and pursued dialogue with Governments.

[1] The report of the Special Rapporteur on the independence of judges and lawyers of 29 April 2011 (A/HRC/17/30 and Corr.1) analyses some aspects of the multifaceted relationship between gender and the judiciary within the broader context of the administration of justice. Major obstacles to women's access to justice, including the feminization of poverty, and the lack of gender sensitivity of judicial actors, as well as laws, policies and practices that discriminate against women, were addressed therein and recommendations on the role of the judiciary in advancing women's human rights were made.

[2] A/HRC/17/30 and Corr.1.

7. On 15 April 2011, the Special Rapporteur gave a speech on "The role of the United Nations Special Rapporteur on the independence of judges and lawyers in promoting and seeking to ensure the Basic Principles on the Role of Lawyers", during the event commemorating the twenty-fifth anniversary of the organization Lawyers for Lawyers, which was held in Amsterdam.

8. On 26 and 27 May 2011, she participated in an expert meeting on "Gender and Victim and Witness Protection" organized in Geneva by the Office of the United Nations High Commissioner for Human Rights, during which she delivered a statement.

9. On 30 May 2011, the Special Rapporteur submitted her annual report to the Human Rights Council (A/HRC/17/30 and Corr.1), accompanied by an addendum on communications, an addendum on her August-September and December 2010 missions to Mozambique and an addendum on her October 2010 mission to Mexico. During the seventeenth session of the Human Rights Council, on 31 May 2011, she participated in a side-event on "The role of judges and lawyers in times of crisis", organized by the International Commission of Jurists. On 1 June 2011, she also participated in a side-event regarding the report of her mission to Mexico, organized by the Mexican Commission on the Defence and Promotion of Human Rights, the World Organization against Torture, the Geneva Office of Peace Brigades International, and the Law Society.

10. On 16 and 17 June, the Special Rapporteur attended an international conference on "Strengthening the Capacity of National Associations of Judges and the Domestic Application of the Convention for the Protection of Human Rights and Fundamental Freedoms", hosting a panel on "Challenges to the independence of the judiciary and judges", in Kiev. The conference was organized within the framework of the Second Annual Meeting of the authorized representatives of the national associations of judges of Armenia, Estonia, Georgia, Kazakhstan, Poland and Ukraine, States parties to a memorandum of understanding on multilateral cooperation, with the cooperation of the Council of Europe and the Deutsche Stiftung für Internationale Rechtliche Zusammenarbeit e.V.

11. The Special Rapporteur participated in different interactive panels in the fourth Law in the Future Conference organized by the Hague Institute for the Internationalization of Law (HiiL) in The Hague on 23 and 24 June 2011.

12. From 27 June to 1 July 2011, she participated in the nineteenth annual meeting of Special Rapporteurs, Representatives, Independent Experts and Chairpersons of Working Groups of the Human Rights Council, organized by the Office of the United Nations High Commissioner for Human Rights in Geneva.

13. The Special Rapporteur visited Bulgaria (from 9 to 16 May 2011) and Romania (from 17 to 24 May 2011). Reports on these missions and the related recommendations will be included in addenda to the Special Rapporteur's next report to the Human Rights Council. The Special Rapporteur wishes to thank the Governments of Bulgaria and Romania for their cooperation. She also wishes to thank the Government of Turkey for the invitation extended to her to visit the country in October 2011.

14. The Special Rapporteur recalls that, since her appointment, she has requested invitations to visit or sent reminders to the following countries: Angola (2008); Argentina (2011); Azerbaijan (2009); Bangladesh (2007); Cambodia (2006); China

(2011); Cuba (1995); Egypt (1999); Equatorial Guinea (2002); Fiji (2007); Georgia (2008); India (2011); the Islamic Republic of Iran (2006); Iraq (2008); Kenya (2000); Liberia (2010); Malaysia (2011); Maldives (follow-up visit, 2011); Myanmar (2009); Nepal (2011); Nigeria (1995); Pakistan (2000); the Philippines (2006); Sri Lanka (1999); Tunisia (1997); Turkmenistan (1996); Uzbekistan (1996); Venezuela (Bolivarian Republic of) (2011); and Zimbabwe (2001).

15. The Special Rapporteur hopes that invitations from the above-mentioned countries will be received in the near future. She also wishes to thank the Governments that have responded positively to her requests for a visit.

III. Gender in the criminal justice system: the role of judges and lawyers

A. Introduction, normative framework and rationale

16. In 1994, the Commission on Human Rights called upon special rapporteurs to regularly and systematically include in their reports available information on human rights violations against women.[3] Special procedures were more recently reminded to integrate a gender perspective into the implementation of their mandate.[4] The Special Rapporteur's mandate itself entails the requested application of a gender perspective in her work.

17. The Special Rapporteur has already established and analysed the importance of combating impunity in respect of upholding the rule of law and democratic governance and the role to be played by the criminal justice system.[5] It is also well established under international human rights law that States have an obligation to investigate, prosecute and provide remedy for victims of human rights violations, including gender-based violence. Judges and lawyers have a particular responsibility for protecting and promoting both human rights and the rule of law.[6]

18. Moreover, the principles of non-discrimination on the grounds of gender, and equality between women and men, have been recognized and enshrined in numerous international and regional human rights instruments, including in the principal United Nations' human rights treaties,[7] in particular article 14 (1) of the International Covenant on Civil and Political Rights (see General Assembly resolution 2200 A (XXI), annex), which states that "All persons shall be equal before the courts and tribunals" and the Convention on the Elimination of All Forms of Discrimination against Women (United Nations, *Treaty Series*, vol. 1249, No. 20378), which

[3] Resolution 1994/45, para. 18.

[4] Human Rights Council resolution 6/30, para. 18.

[5] A/65/274.

[6] See: Draft Universal Declaration on the Independence of Justice, article 1 (b); Beijing Statement of Principles of the Independence of the Judiciary in the LAWASIA Region, principle 10 (b); Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, principles F (h) and I (i); Declaration of Caracas of the Ibero-American Summit of Presidents of Supreme Justice Tribunals and Courts, policy 1; Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors, adopted by the International Association of Prosecutors (April 1999), articles 1 and 4.2 (b).

[7] See, for instance, A/HRC/15/40 and Human Rights Council resolution 15/23.

enshrines the minimum standards that States must uphold in order for every woman under their jurisdiction to fully enjoy her rights without discrimination.

19. In this report, "gender" means the socially constructed roles of women and men or the social differences that are learned.[8] Gender stereotypes — a generalized view or preconception of attributes or characteristics possessed by, or the roles that are or should be performed by, members of a particular gender group — affect both men and women, but "they often have a particularly egregious effect on women".[9] Article 5 (a) of the Committee on the Elimination of Discrimination against Women contains the obligation to "modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women".[10] Gender stereotypes are both pervasive and persistent. Understanding the role of the judiciary in shaping and contributing to gender stereotypes is an essential step for States in addressing inequality and thereby abiding by their international obligations.

20. Approaching the criminal justice system from a gender perspective involves an analysis of its impact upon women and men and ensuring that women's rights, perspectives and needs, as well as those of men, are systematically considered. Historically and globally, women have been underrepresented as actors in the criminal justice system, even if they constitute a large proportion of the victims of crimes and human rights violations and are disproportionately affected by gender-based violence and discrimination.[11] In this context, this report focuses on the treatment of women in the criminal justice system. However, the concept of gender should not be considered to encompass exclusively the situation of women.

21. When crimes and human rights violations go unpunished, the State can be held accountable for contributing to a culture of impunity and lawlessness. When certain types of crimes, such as gender-based crimes and other types of crimes that disproportionately affect one gender, go unpunished, the State can, in addition, be held accountable for discriminatory treatment under international law.

B. The case for a gender-representative and -sensitive judiciary

22. The judiciary and legal profession are not immune to gender-based discrimination. Women have been historically excluded from judicial office, as the legal profession has been considered a male domain, where appointments and promotion procedures and criteria are also often gender-biased.[12]

[8] A/HRC/12/46, para. 33.

[9] Rebecca Cook and Simone Cusack, *Gender Stereotyping: Transnational Legal Perspective* (Philadelphia, Pennsylvania, University of Pennsylvania Press, 2010), p. 1; see, also, p. 9.

[10] See also: article 2 (2), Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa; article 8 (b), Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women; and article 12 (1), Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence.

[11] United Nations Office on Drugs and Crime, "Crosscutting issues: Gender in the criminal justice system assessment tool — criminal justice assessment toolkit" (Vienna, 2010), p. 1.

[12] Dermot Feenan, "Women and judging", *Feminist Legal Studies*, vol. 17, No. 1 (2009), p. 3.

1. Women's representation in the judiciary

23. Women are still largely underrepresented in judicial office and in the legal profession throughout the world, in particular in the highest-level positions; this undoubtedly reflects institutionalized gender discrimination within the justice system.[13] While worldwide quotas have caused a large increase in female representation in the legislature, States seem to have bypassed the opportunity to apply a similar gender analysis to the judicial branch. States, then, have to undertake measures to ensure that women have the same right as men to be judges, advocates or other officers of the court.[14]

24. Women appointed to office also have to face bias and discrimination from their colleagues and society at large on the basis of assumptions about their gender. Their behaviour is scrutinized and harshly criticized, their qualifications are more frequently questioned than those of their male colleagues, and their objectivity is more likely to be challenged. Women are often restricted or pushed to working on "low-profile" cases, in areas of the law that are traditionally associated with women, like family law, or confined to working in the lower courts.[15]

25. Women have also been traditionally underrepresented on international judicial bodies. Gender imbalance presents a threat to the legitimacy and authority of such international tribunals. The institutional features of the Rome Statute of the International Criminal Court strongly contributed to the fact that there are a majority of women judges currently sitting on the International Criminal Court.[16]

26. There are several rationales that exist to explain the importance of increased representation of women in the judiciary. Since a primary function of the judiciary is to promote equality and fairness, the composition of courts and other judicial

[13] Dermot Feenan, "Women judges: gendering judging, justifying diversity", *Journal of Law and Society*, vol. 35, No. 4 (2008), p. 491. See also Marcela Valente, "Justice for women in men's courts?". Available from http://ipsnews.net/print.asp?idnews=37429.

[14] Article 7 (b), Convention on the Elimination of All Forms of Discrimination against Women; Committee on the Elimination of Discrimination against Women General Recommendation No. 23, para. 5; Beijing Declaration, para. 13, and Beijing Platform for Action, paras. 190 (a), 232 (d) and 323 (m); United Nations Basic Principles on the Independence of the Judiciary, principle 10; United Nations Basic Principles on the Role of Lawyers, principle 10; United Nations Guidelines on the Role of Prosecutors, guideline 2 (a); Draft Universal Declaration on the Independence of Justice, articles 10, 77 and 80; Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights, article 14 (3); European Court of Human Rights, Rules of Court, rule 14; Rome Statute, article 36 (8) (a) (iii); Beijing Statement of Principles of the Independence of the Judiciary in the LAWASIA Region, para. 13; Latimer House Guidelines for the Commonwealth, principle II.1; Recommendation CM/Rec(2010)12 of the Committee of Ministers of the Council of Europe on judges: independence, efficiency and responsibilities, chap. VI.45.

[15] Sally Kerney, "Critical perspectives on gender and judging", *Politics and Gender*, vol. 6, No. 3 (2010), p. 439; Feenan, "Women judges: gendering judging, justifying diversity", p. 499; Justice McLachlin, "Why we need women judges", statement, delivered at the eighth biennial conference of the International Association of Women Judges Conference, Sydney, Australia, 3-7 May 2006; and Karen O'Connor, "Judging alone: reflections on the importance of women on the court", *Politics and Gender*, vol. 6, No. 3 (2010), p. 449.

[16] Articles 36 (8) (a) (iii) and 36 (8) (b); see also: Louise Chappell, "Gender and judging at the International Criminal Court", *Politics and Gender*, vol. 6, No. 3 (2010), p. 488. Article 44 (2) states that the criteria set in article 36 (8) apply mutatis mutandis to the selection of staff in the Office of the Prosecutor and in the Registry.

offices should reflect the State's commitment to equality. The judicial system should also demonstrate a fair representation of the pluralistic society and communities they serve, by reflecting their diversity, so as to preserve and improve public trust and confidence in its credibility, legitimacy and impartiality.[17]

27. Moreover, women, like men, are informed and influenced by their backgrounds and experiences. For various reasons, whether historical, cultural, biological, social or religious, women's experiences differ from those of men, and for this reason women can bring different perspectives or approaches to adjudication, while fighting against gender stereotypes. Consequently, a diverse judiciary will ensure a more balanced and impartial perspective on matters before the courts, eliminating barriers that have prevented some judges from addressing certain issues fairly. This reasoning is equally applicable to the matter of encouraging the representation of other underrepresented "groups", like ethnic, racial or sexual minorities, among others.[18]

28. Measures and mechanisms designed to deliver change can take various forms, ranging from constitutional or legal reform to public outreach. To be effective, any set of measures requires conscious efforts on the part of all branches of the government, as well as the legal profession. The legal profession, for instance, can identify and remove hidden barriers which make it more difficult for women to excel in the traditional practice of law and therefore to be appointed to higher positions or judicial office.[19]

29. In South Africa, the constitution itself provides for greater gender representation in the judiciary.[20] The Virtue Foundation has recently launched the "Women Judges in the Pipeline Initiative", aimed at creating and increasing opportunities for women to become judges in judiciaries across the globe.[21] The International Bar Association and the International Criminal Court have launched "Calling African Women Lawyers", an information campaign devised to address the consistent underrepresentation of African women on the List of Legal Counsel of the Court.[22]

30. Decisional outcome is only one aspect of judging. Gender impact on judicial behaviour, including of peers and other legal professionals, is another area where the impact of women's representation in the courts deserves attention.

31. From a human rights perspective, women judges may play a unique and necessary role in the implementation and enforcement of laws, particularly those that provide access to justice for women and their full participation in society.[23] Women sitting on panels of judges have the potential ability to attract their male colleagues' support for issues relating to gender discrimination.

32. The strongest impact of women's participation as members of the judiciary is perhaps exerted through the role they have played — and continue to play — in shaping and interpreting both national and international law relating to gender-based

[17] See Draft Universal Declaration on the Independence of Justice, article 11 (a).
[18] See, for instance, Feenan, "Women judges: gendering judging, justifying diversity", p. 517.
[19] McLachlin, "Why we need women judges".
[20] Feenan, "Women and judging", p. 2.
[21] www.virtuefoundation.org.
[22] A/HRC/17/30 and Corr.1, para. 51.
[23] Sandra Day O'Connor and Kim Azzarelli, "Sustainable development, rule of law, and the impact of women judges", *Cornell International Law Journal*, vol. 44 (2011), pp. 4 and 6.

violence, including rape and other forms of sexual violence. The inclusion of women in the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 is deemed to have been dramatic, as "every case involving rape or other forms of sexual violence has involved women".[24]

33. The presence of Justice Pillay, the only woman judge on the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994, is said to have been instrumental in effecting inclusion of evidence of rape, first overlooked by the Office of the Prosecutor, and amending the indictment in the Akayesu case, which was the first to recognize rape as a form of genocide.[25] Interpretation of the law, then, is at least as important as the making of the law.

2. Gender and women's rights training and capacity-building

34. Overcoming the male-female imbalance in the judicial branch is only one aspect of its sensitization to gender equality and women's rights. Providing for gender-awareness training of judges, prosecutors, public defenders and lawyers of both sexes is equally important.[26] Having women in the judiciary does not guarantee the inclusion of a gender perspective per se, since both men and women are prone to gender-based biases, stereotypes and prejudices. Under peer pressure and the social pressure to "fit" in a patriarchal judicial system, women in the legal profession have sometimes adopted the forms of behaviour of their male colleagues, applying the same gender-based stereotypes in their judgements.

35. Yet, an important aspect of the requirement of impartiality is that "judges must not allow their judgement to be influenced by personal bias or prejudice, nor harbour preconceptions about the particular case before them".[27] Changing attitudes and eliminating stereotypes and prejudices require institutionalized and sustained efforts in the form of training programmes, continuing education and capacity-building on international human rights standards, obligations and jurisprudence, as well as national laws against discrimination which too often remain unknown or are not applied.

36. The United Nations Basic Principles on the Independence of the Judiciary, as well as various other legal standards, recognize that appropriate education is one of

[24] Julie Mertus, *Women's Participation in the International Criminal Tribunal for the Former Yugoslavia: Transitional Justice for Bosnia and Herzegovina* (Cambridge, Massachusetts, Hunt Alternative Fund, 2004), p. 13.

[25] Louise Chappell, "Gender and judging at the International Criminal Court", p. 490; Farida Banda, "Project on a mechanism to address laws that discriminate against women", study commissioned by the Office of the United Nations High Commissioner for Human Rights, Women's Rights and Gender Unit, 2008, p. 12.

[26] Marcela Valente, "Women judges not enough: gender awareness training needed", Inter Press Service News Agency (IPS). Available from http://ipsnews.net/print.asp?idnews=48519. See also: Bangalore Principles of Judicial Conduct, principle 5 (1).

[27] Human Rights Committee, General Comment No. 32, para. 21. See also: Bangalore Principles of Judicial Conduct, principle 5 (2).

the preconditions for selection for judicial office.[28] The Basic Principles on the Role of Lawyers provide that Governments must ensure that lawyers have appropriate education and training, so as to be able to advise and protect the rights of their clients and uphold the cause of justice.[29] The Committee on the Elimination of Discrimination against Women affirmed that "Gender-sensitive training of judicial and law enforcement officers and other public officials is essential for the effective implementation of the Convention".[30] The Rome Statute of the International Criminal Court requires that, in the selection of judges, prosecutors and other staff, the need for legal expertise on violence against women or children must be taken into account.[31]

37. The Special Rapporteur has underlined the need for continuing and effective education in international and regional human rights law for magistrates, judges, prosecutors, public defenders and lawyers, in addition to regular legal training, in a previous report to the Human Rights Council.[32] Times of legal transition, change or reform are particularly favourable occasions for instituting such programmes of judicial education.

38. As State actors, judges have an obligation and responsibility under international law to ensure that substantive rights are enjoyed without discrimination. This entails a proactive duty to ensure that they are upholding international equality and non-discrimination standards in both case deliberations and the application of court procedures. Judges can recommend the repeal or amendment of a law or rule if inconsistent with international human rights standards.[33]

39. In the words of Justice Majida Razvi, one of Pakistan's first female High Court judges, "Judges always have the discretionary power to ensure that justice is done by rendering judgements that are fair. They can use this space while remaining within the parameters provided by the laws."[34] Key to this process is the willingness of the judiciary to recognize the opportunities for interpreting laws and principles in ways that make equality possible.

40. International human rights treaties and standards, as well as the jurisprudence arising from judicial and quasi-judicial bodies, provide judges with legitimate instruments for adjudication that respects equality and non-discrimination principles. For instance, in the case of *R* v. *Ewanchuck*, the Supreme Court of Canada drew on the Committee on the Elimination of Discrimination against Women and its general recommendation No. 19 to decide, in a case of assault, that violence against women is a matter of inequality and violation of human rights and that stereotypical assumptions had created the myth that women are sexually

[28] See for instance: Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, A (4) (i) and (k); Recommendation No. R (94)12, Committee of Ministers of the Council of Europe, principle III (1); Statute of the Iberoamerican Judge, article 24.

[29] Principle 9.

[30] General Recommendation No. 19, para. 24 (b). See also: Updated Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice (General Assembly resolution 65/228, annex), para. 20 (a).

[31] Articles 44 (2) and 36 (8).

[32] A/HRC/14/26; see also A/HRC/11/41, paras. 80-84; and A/64/181, paras. 28-30.

[33] A/HRC/14/26, para. 70.

[34] Cassandra Balchin, "Sitting in judgement: for men only?", 2 August 2010 Open Democracy. Available from www.opendemocracy.net.

available if dressed in a certain way or until they resist".[35] In *State* v. *Godfrey Baloyi*, the Constitutional Court of South Africa also used the Convention to uphold the constitutional validity of legislation that reversed the burden of proof in allegations of breaches of interdicts in cases of domestic violence against women.[36]

C. Participation of women victims in the criminal justice system

41. Gender discrimination against women, if particularly blatant in cases of gender-based violence, is also a concern in respect of non-gendered crimes experienced by women.

42. The lack of criminalization at the national level of certain kinds of gender-based harm, such as domestic violence, marital rape and sexual harassment, which disproportionately affect women, has a detrimental impact on women's access to and participation in criminal justice proceedings. As seen above, even if judges do not make the laws, they have a duty and responsibility to uphold equality and non-discrimination standards, whether national or international, with a view to pointing towards the gaps in legislation.[37] Additionally, when legal systems do not specifically criminalize particular gender-based forms of abuse, harmful forms of conduct should be investigated, prosecuted and sentenced under existing general laws, including equality provisions found in the constitution of the State.

43. A number of laws directly or indirectly bar or limit women from accessing the criminal justice system. These include laws that restrict women's freedom of movement, and laws on "male guardianship" which keep women in the legal status of minors, thereby denying women a legal capacity equal to that of men and the opportunity to exercise that capacity, which is contrary to article 15 of the Convention on the Elimination of All Forms of Discrimination against Women.[38] Such laws also limit women's access to and engagement with the criminal justice system.

44. Women whose rights have been violated possess the right to access remedy, including by participating in criminal proceedings. While the legal process must conform to international fair trial standards, court procedures and rules of evidence should ensure that women are not at a disadvantage with respect to participating.[39] There is a strong emerging trend in international law that recognizes the legal status and rights of victims of gross human rights violations, criminal offences and crimes

[35] United Nations High Commissioner for Human Rights, statement, tenth biennial International Association of Women Judges Conference, Seoul, 2010, p. 16.

[36] Ibid., p. 17.

[37] A/HRC/17/30 and Corr.1, paras. 27-36; see also: Fareda Banda, "Project on a mechanism to address laws that discriminate against women".

[38] Human Rights Watch, *Perpetual Minors: Human Rights Abuses Stemming from Male Guardianship and Sex Segregation in Saudi Arabia* (New York, 2008), p. 24.

[39] Medical Foundation for the Care of Victims of Torture, "Justice denied: The experiences of 100 torture surviving women of seeking justice and rehabilitation" (2009), p. 19.

against international law.[40] Several international bodies have paid particular attention to the role of victims in criminal proceedings.[41]

45. The Rome Statute of the International Criminal Court allows victims to participate directly or through legal representatives in proceedings before the Court, by presenting their views and concerns at all stages that affect their personal interests.[42] Regional standards, too, reflect the importance of human rights victims' participation in judicial proceedings.[43]

46. Procedures and rules of evidence in the criminal justice system are often infiltrated by strong gender stereotypes which can result in engagement in gender-biased behaviour by court officials and discrimination against women by the criminal system in general. Gender stereotypes particularly affect procedures in rape and violence against women cases.[44]

47. In many States, provisions on rape and sexual assault in criminal codes are based on gender stereotypes and prejudices which result in the discriminatory treatment of victims, who are disproportionately female. Hence, high levels of attrition plague the prosecution of rape and sexual violence cases throughout the world, resulting in a significant problem of impunity.[45]

48. Examples of stereotypes applied to rape cases through gender-biased criminal rules of evidence and procedure are provided by cases where the following requirements or beliefs obtain: proof of physical violence is required to show that there was no consent; women are likely to lie, therefore evidence should be accepted only if corroborated; women can be assumed to be sexually available; women can be inferred to be consenting to sex even if forced, threatened or coerced, because they remained silent; previous sexual experience predisposes women to be sexually available, or to automatically consent to sex; women bear the responsibility for sexual attacks or invite them by being out late or in isolated places or by dressing in

[40] International Commission of Jurists, *Trial Observation Manual for Criminal Proceedings*, Practitioners Guide, No. 5 (Geneva, 2009), p. 147.

[41] For instance: Model Strategies and Practical Measures on the Elimination of Violence Against Women in the Field of Crime Prevention and Criminal Justice (General Assembly resolution 52/86, annex), para. 7; Optional Protocol to the Convention of the Rights of the Child on the sale of children, child prostitution and child pornography, article 8; Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (General Assembly resolution 60/147, annex); Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity (E/CN.4/2005/102/Add.1), principle 19, para. 2; and Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, article 6.

[42] Article 68 (3); and Rules of Procedure and Evidence of the International Criminal Court, rules 85 and 89-93.

[43] Committee of Ministers of the Council of Europe, Recommendation (85)11 E on the Position of the victim in the framework of criminal law and procedures; Guidelines on the Protection of Victims of Terrorist Acts, Committee of Ministers of the Council of Europe (2 March 2005); Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa; and Framework decision of 15 March 2001 on the standing of victims in criminal proceedings, Council of the European Union.

[44] Lisa Gormley, "Gender stereotyping in cases of rape and violence against women: developments in human rights jurisprudence", *INTERIGHTS Bulletin*, vol. 16, No. 3 (2011), p. 140.

[45] Ibid.

a particular manner; it is impossible to rape a sex worker; raped women have been dishonoured or shamed or are guilty rather than victimized.[46]

49. In the context of domestic violence, the Human Rights Committee expressed concerns about the inclusion in law provisions of stereotypical language to describe the behaviour of victims of domestic violence.[47]

50. Progressive measures were adopted in the rules of procedure and evidence of the International Tribunals for the former Yugoslavia and Rwanda and, later, in those of the International Criminal Court: impossible evidentiary burdens should not be imposed on the victim; no corroboration of the victim's testimony shall be required; sexual availability should not be presupposed; the use of evidence relating to the prior sexual conduct of the victim is not allowed; silence cannot be assumed to indicate consent; and the credibility of the victim cannot be called into question simply on the basis of her gender.[48]

51. For women's participation in the criminal justice system to be effective and non-discriminatory, their counsel, as well as the prosecutors, also need to be aware of gender equality and women's rights issues. However, because of biased assumptions regarding their gender or the crimes they have been victims of, women too often have to endure lack of action from the prosecution, discriminatory attitudes by prosecutors, judges and other court officials, including defence counsel, and poor advice from their own counsel — all of which can result in their secondary victimization or re-victimization and the non-enforcement of their rights. Research has shown that the psychological impact of victimization can be considerably exacerbated by such insensitive treatment and lack of understanding of victims' needs.[49] Women are not the only ones facing secondary victimization: children, persons with disabilities, and male victims of rape, constitute particularly vulnerable categories of victims.

52. Representation of women within the ranks of prosecutors, and their adequate training on gender equality and women's rights, are important for the proper functioning of a gender-sensitive criminal justice system. Prosecutors are entrusted with a number of functions which they must carry out in an impartial and objective manner while avoiding gender-based or any other kind of discrimination.[50] This implies that prosecutors shall be free from any bias when carrying out their professional duties. In the Rome Statute, the prosecutor is charged with investigating and prosecuting crimes in a way that "respect(s) the interests and personal circumstances of victims and witnesses, including … gender". He or she is also required to "take into account the nature of the crime, in particular where it involves sexual violence, gender violence or violence against children".[51]

53. The jurisprudence of international and regional bodies has addressed the issue of biases and inaction of the criminal justice system and has held States accountable.

[46] Ibid.

[47] Concluding observations of the Human Rights Committee, on Ukraine (CCPR/C/UKR/CO/6), 28 November 2006, para. 10.

[48] Rule 96; Rome Statute, article 69(4); Rules of Procedure and Evidence of the International Criminal Court, rules 63 and 70-72.

[49] Jonathan Doak, *Victims' Rights, Human Rights and Criminal Justice* (Oxford, Hart Publications, 2008), p. 51.

[50] United Nations Guidelines on the Role of Prosecutors, guideline 13, para. (a).

[51] Article 54 (1) (b).

In *AT* v. *Hungary*, the Committee on the Elimination of Discrimination against Women found a systemic deficiency in the State's legal responses to domestic violence in the form of lengthy and unwieldy criminal proceedings. The Committee confirmed that the inaction of the State was a breach of international law. In *Vertido* v. *Philippines*, the Committee dealt with how the investigation and prosecution of a rape case in the Philippines had contravened legal obligations under the Convention. The Committee explicitly identified stereotyping as affecting women's right to a fair and just trial and stressed that "the judiciary must take caution not to create inflexible standards of what women or girls should be or what they should have done when confronted with a situation of rape based merely on preconceived notions of what defines a rape victim or a victim of gender-based violence, in general".[52]

54. In the inter-American human rights system, the so-called Cotton Field case illustrated the pernicious effects of stereotyping of women victims of sexual violence and how it undermines the proper functioning of the criminal justice.[53] The Inter-American Court of Human Rights also found that stereotyping of victims of violence by police, investigators and prosecutors constituted a breach of the right of the victims' families not to be subjected to torture and ill-treatment.[54] In two recent cases that concerned the rape of two poor indigenous women by members of the military, the Court found Mexico to be in breach of its international obligations because the victims were met with hostility and experienced negligence in the investigations, little medical response and no support services by the Government, including judicial authorities; moreover, threats against them and their families had not been properly addressed, which led to an overall obstruction of justice.[55]

55. The European Court of Human Rights challenged stereotypes about "date rape" in *MC* v. *Bulgaria*.[56] The Court also upheld the positive duty of States to ensure the effectiveness of the criminal law system through effective investigation and prosecution. In *Opuz* v. *Turkey*, the Court condemned, inter alia, the discrimination manifested in the general attitude of the local authorities, and the judicial passivity in responding to the victims' complaint and providing them with effective protection, as being conducive to domestic violence.[57]

56. Prosecution of gender-based crimes should be based not on the individual commitment of the prosecutor but rather on an institutional policy. This requires integration of a gender perspective in the criminal justice system as well as, in particular, institutionalized and sustained trainings of prosecutors.

57. In the opinion of the Secretary-General, "(s)pecialized courts can improve efficiency, minimize the burden on victims and improve case outcomes when prosecutors, judges and other court officers have received relevant training".[58] Such courts seem to reduce the turnaround time and attrition of cases and to increase

[52] CEDAW/C/46/D/18/2008, para. 8.4; see also: Gormley "Gender stereotyping", pp. 143-144.

[53] *Gonzales et al.* v. *Mexico*, 2010; see also: Gormley, "Gender stereotyping", p. 142.

[54] Gormley, "Gender stereotyping", p. 143.

[55] *Fernández-Ortega et al.* v. *Mexico*, 2010; and *Rosendo-Cantú et al.* v. *Mexico*, 2010.

[56] *M.C.* v. *Bulgaria*, 2003, paras. 177 and 185.

[57] Paras. 119-123, 168-170 and 198; see also: Bonita Meyersfeld, "Developments in international law and domestic violence", *INTERIGHTS Bulletin*, Vol. 16, No. 3 (2011), pp. 110 and 113.

[58] Report of the Secretary-General entitled "In-depth study on all forms of violence against women" (A/61/122/Add.1 and Corr.1), para. 315.

conviction rates. Specialized courts, like mobile and domestic violence courts, can improve the functioning of justice for women and allow judges and judicial personnel to increase their expertise.[59] While international law does not preclude the existence of specialist jurisdictions for certain parties in criminal matters in strictly defined situations, it is imperative that such tribunals conform to all international provisions for fair trial.[60]

58. While supporting the creation of specialized criminal courts to deal specifically with gender-based crimes, the Special Rapporteur wishes to highlight that the key to these courts' working efficiently to preserve victims' rights is a very well-designed and organized structure capable of providing comprehensive legal, social and psychological support to victims, especially when they need to leave their home and/or family temporarily. Specialized units created within courts can also have a very positive impact on protecting women's rights.

59. Setting up specialized courts as a temporary special measure for redressing a situation of marked unequal access to the criminal justice system could prove useful. The Special Rapporteur wishes to underline that it is important that decisions to create specialized courts or units, reinforce gender training or reform procedures in the criminal justice system be based on an appropriate and thorough gender analysis of the functioning of the criminal justice system and accompanied by monitoring and evaluation systems to ensure that the impact is effective.

D. Protection of women victims and witnesses and their families in the criminal justice system

60. Participation in criminal proceedings often carries a level of risk for any witness. The challenge facing criminal justice systems is to be able to adjust the level of risk-relating to the specificities of individual cases. Successful witness and victim protection is at the core of any efficient investigation and prosecution of perpetrators of gross violations of human rights and serious violations of international humanitarian law, including sexual and gender-based violence and particular crimes such as human trafficking. The provision of a witness and victim protection framework helps to create an enabling environment for the reporting of cases by witnesses and victims, and encourages them to cooperate in subsequent proceedings. Several holders of special procedures mandates have noted that "effective witness protection efforts are often lacking despite their relevance to the protection from human rights violations, such as extrajudicial executions, torture, human trafficking, disappearances and violence against women".[61]

61. Judges, prosecutors and lawyers have a role to play in requesting and enforcing protection measures, and deciding or recommending which measures should be applied in which circumstances. They should therefore be aware of the

[59] UN-Women, *Progress of the World's Women 2011-2012: In Pursuit of Justice* (New York, 2011), pp. 58-59.

[60] International Commission of Jurists, "International Principles on the Independence and Accountability of Judges, Lawyers and Prosecutors", Practitioners Guide, No. 1 (Geneva, 2007), pp. 8-9.

[61] Joint statement on "The role of witness protection in ending the cycle of impunity for human rights violations", 30 September 2009.

protection mechanisms available nationally and should be sensitized to the gender dimensions of protection.

62. Witness protection is not a favour granted to the witness but a duty of States under international law. Key international and regional human rights instruments make clear reference to States' obligations to adopt specific measures designed to protect witnesses and victims from threats and reprisals.[62] The recent Council of Europe Convention on preventing and combating violence against women and domestic violence has a specific provision on risk assessment and risk management (article 51). The practice of international tribunals has reinforced the standards, norms and principles found in these instruments.[63]

63. Article 54 (1) (b) of the Rome Statute requires the prosecutor of the International Criminal Court to "take appropriate measures to ensure the effective investigation and prosecution of crimes within the jurisdiction of the Court and, in doing so, respect the interests and personal circumstances of victims and witnesses, including age, gender as defined in article 7, paragraph 3, and health, and take into account the nature of the crime, in particular where it involves sexual violence, gender violence or violence against children". The measures taken by the Court must "not be prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial".[64] While the international courts have a unique and specific character, the operating principles in relation to protection and support of witnesses are of such a generic nature that any jurisdiction could benefit from considering the experiences and the practices developed for application at the national level.

64. Protection measures and programmes for victims and witnesses should be routinely evaluated for effectiveness. At a minimum, two sets of protection measures are necessary to enable witnesses and victims to come forward safely for the purpose of collaborating with the criminal justice system: (a) measures and procedures put in place by the judicial authorities while investigating crimes or taking testimony in the courtroom; (b) protection measures and safeguards provided, when necessary, before, during and after judicial proceedings by formal witness protection programmes.[65]

65. Procedural measures of protection are measures granted by a judge or the judicial authority. During trial, such measures may include, inter alia: excluding the

[62] These include: International Covenant on Civil and Political Rights, articles 2 (1), 10 and 17; Convention on the Elimination of All Forms of Discrimination against Women, articles 2 and 6; Convention against Torture and Other Cruel, Inhuman of Degrading Treatment or Punishment, article 13; International Convention for the Protection of All Persons from Enforced Disappearance, article 12 (4); Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, article 8 (1) (a); Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, para. 6 (d); Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, para. 3 (b); Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity, principle 10; and Basic Principles and Guidelines on the Rights to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, para. III (5).

[63] A/HRC/15/33, para. 12.

[64] Article 68 (1); see also: Rules of Procedure and Evidence of the International Criminal Court, rules 87-88.

[65] A/HRC/15/33, para. 4.

public from the court for part of or the entirety of a trial; use of a pseudonym; face or voice distortion; use of screens to shield the witness; testimony by video-link, testimony without the presence of the defendant or a closed court session; prohibition of the publication or dissemination of information that might reveal the identity of a victim or witness; appointing a counsel to conduct cross-cutting examination when the accused is acting as his or her own counsel; or allowing victims under age 18 to testify in the presence of a support person.[66]

66. While testifying in a criminal trial is a stressful experience for any witness, some are more vulnerable than others to such stress and may require special support measures designed to protect and enhance the quality of their testimony. In addition, needs may differ according to gender and the nature of the crime under consideration, which is especially relevant when the witness is also a victim. Court procedures may be adjusted to the particular capacity and needs of witnesses, which should be previously assessed in relation to their personal situation and the circumstances of their case. Such support or assistance measures can involve adjusting questioning so as to eliminate unnecessary, intrusive, repetitive or embarrassing questions; allowing for frequent breaks during the testimony; altering the courtroom settings to make them less formal; and having a support person who is present in the court or event, sit next to the witness.

67. Formal witness protection programmes are designed to grant a full range of physical protection and psychological support to beneficiaries before, during and after judicial proceedings. Protection programmes, as well as specific measures, should take into account particular needs of women and the particular risks and threats that they face.[67]

68. At the International Criminal Court, special measures may be ordered to facilitate the testimony of a traumatized victim or witness, a child, an elderly person or a victim of sexual violence. The Victims and Witnesses Unit located within the Registry can provide protective measures and security arrangements, counselling and other appropriate assistance for witnesses, victims and others at risk on account of testimony given by witnesses.

69. Special action taken with a view to ensuring gender-sensitive protection of women should be presented in the context of providing equal protection of and access to the law, so that judges and other authorities involved in deciding such measures are seen not as performing something "special" for women, which may undermine the accused's right to fair trial, but rather as ensuring that what exists for others also exists for women.

70. The Special Rapporteur wishes to underline in the context of protection measures the serious issue of "protective detention" or "safe custody". Under safe custody, victims of domestic violence, rape and marriages of convenience, inter alia, are detained in a jail or shelter as a mechanism of protection. Imprisoning victims and/or witnesses is unjust, puts them at great risk of further custodial violence and/or keeps them confined against their will. It also often deprives them of access to their children or family and necessary medical and psychological services. Provisions of safe custody are usually gender-neutral; however, in practice, they have a disproportionate impact on women, girls and those in poverty. Placing

[66] Ibid., para. 23.

[67] Ibid., paras. 25-38.

victims in protective custody is an extreme measure which should constitute a last resort and one applied with the consent of the victim, and with all appropriate legal safeguards for the review of the detention.[68]

71. The Special Rapporteur wishes to highlight further the importance of women's agency, which, in the context of witness protection, means that they need to be fully informed and empowered to make decisions about what may affect them and whether to testify or not.[69] Women are not intrinsically vulnerable: it is their particular individual situation, coupled with pervasive societal gender-based discrimination, that facilitates their being threatened and targeted by violence. Specific groups of women, like victims of trafficking, sexual violence, domestic violence and so-called honour crimes and women under age 18, may be found to be especially vulnerable to further violence. Women should not be overprotected simply because of their gender; indeed, with the appropriate safeguards, the experience of witnessing can be empowering for women and crucial for advancing the goals of the criminal justice system. An overprotective attitude can also be the result of judges', prosecutors' and/or lawyers' uncomfortable position when confronted with witnesses' emotions or stories that include details of sexual acts.

72. During her country visits, the Special Rapporteur has received numerous testimonies of women victims of sexual exploitation and trafficking who are fearful because they are dealt with by the same Ministry that is responsible for fighting crimes, usually the Ministry of the Interior, and kept in the same physical location as offenders, who have the opportunity to further intimidate and threaten them. This situation discourages them from filing a complaint denouncing their offenders, thereby impeding their access to justice. In other situations, women victims of trafficking or enforced prostitution stated feeling very discouraged by the justice system because the courts had deprived them of the custody of their children. The Special Rapporteur considers that women victims of such crimes should be put under the protection of a different Ministry, such as the Ministry of Social Welfare, in order that they may avoid situations of re-victimization.

73. The Updated Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice[70] can serve as guidance in formulating a gender- and rights-based approach to victim and witness programming. The Special Rapporteur also wishes to commend the Office of the United Nations High Commissioner for Human Rights initiative aimed at development of a practical tool on gender and witness and victim protection for the implementation of gender-sensitive protection measures at the national level.

E. Women offenders in the criminal justice system

74. Women in conflict with the law and brought before the criminal justice system should benefit from all provisions associated with the right to a fair trial and equality before the courts without discrimination based on their gender, or any other grounds of discrimination prohibited under international law. The Special

[68] See for instance: United Nations Office on Drugs and Crime, "Cross-cutting issues: gender in the criminal justice system assessment tool", p. 34.

[69] Mertus, *Women's Participation in the International Criminal Tribunal for the Former Yugoslavia*, pp. 16-17.

[70] General Assembly resolution 65/228, annex.

Rapporteur is highly concerned both by provisions of criminal law that are discriminatory to women and by the discriminatory application of provisions against them during criminal proceedings. Such discriminatory provisions include, but are not limited to, the criminalization of adultery or fornication, punishing illegal entry and prostitution of victims of trafficking, punishing girls for sexual intercourse with relatives in cases of incest, and criminalization of abortion, including in cases of miscarriages or threat to the life and health of the mother. The Special Rapporteur wishes to recall that by upholding discriminatory laws, judges and prosecutors become parties to the violation of the State's international obligations.

75. Women accused of crimes have the right to a fair public hearing by a competent, independent and impartial tribunal, which, in the opinion of the Special Rapporteur, and as detailed in section III.B of this report, requires that judges, prosecutors and lawyers be sensitized to and trained on gender issues and international human rights of women, including principles of equality and non-discrimination. Judges must be in a position to challenge gender stereotyping and discrimination when they encounter it in the form of wrongful charging of suspects, charges being brought without any supporting evidence of wrongdoing and merely on the basis of hearsay, or mis-charging of a particular form of conduct (like charging abortion as infanticide). Judges must also be willing to challenge stereotyping and discrimination by not detracting from women's testimony or discounting their credibility, which applies whether women are the accused or victims.

76. Judges should also be aware that the presence of mitigating circumstances in gender-specific situations can be introduced in judging women offenders. For instance, the Inter-American Commission on Human Rights was of the opinion that the national court of Trinidad and Tobago, which had sentenced a woman to death, for the murder of her husband, should have taken into account evidence of years of severe violence against the offender. The offender's sentence was ultimately reduced to 13 years on the basis of psychiatric evidence, which showed that, at the time of the murder, she had been suffering from "battered woman syndrome".[71]

77. Challenging gender stereotyping further means challenging common assumptions: about male perpetrators — such as, for instance, their entitlement to control women in various ways and their supposed inability to control their own sexual urges; about male victims, for example, their ability, in cases of male rape, to have defended themselves; and about women as perpetrators of crimes of violence against men. Similar sensitivity is required when dealing with gender norms and expectations regarding lesbian, gay, bisexual and — particularly — transgender victims and perpetrators.

78. Access to legal assistance can also be of particular concern for women offenders. The Human Rights Committee pointed out that "[t]he availability or absence of legal assistance often determines whether or not a person can access the relevant proceedings or participate in them in a meaningful way".[72] Furthermore, the Committee noted that "imposition of fees on the parties to proceedings that would de facto prevent their access to justice might give rise to issues under article 14, paragraph 1".[73] The feminization of poverty observed by the Special

[71] *Indrivani Pamela Ramjattan* v. *Trinidad and Tobago*; see also: Bonita Meyersfeld, "Developments in international law and domestic violence", p. 108.

[72] General Comment No. 32 (CCPR/C/GC/32), para. 10.

[73] Ibid., para. 11.

Rapporteur in her report to the Human Rights Council[74] too often precludes women from having access to proper legal representation.

79. The condemnation of, and imposition of certain sentences on, women are also of great concern to the Special Rapporteur. Women, like men, have the right not to be punished other than in accordance with international standards, which means that torture and other cruel, inhuman or degrading treatment or punishment are absolutely prohibited.[75] This means that public executions, stoning and corporal punishment (including physical punishment involving caning, flogging, whipping, mutilation and amputation) are prohibited under international law. Yet, the Special Rapporteur notes that such sentences are still ordered and applied and disproportionately target women.

80. The vast majority of prisoners worldwide are men, resulting in detention systems' being designed for them and an overlooking of the special needs of women.[76] While conditions of detention may not be discriminatory as such, not taking into account the special needs of women in a system primarily designed for men results in detentions having a discriminatory impact on women. For instance, problems such as overcrowding, poor hygiene standards and inadequate visiting facilities do affect both men and women detainees, but women are especially vulnerable to poor hygiene conditions during menstruation. Moreover, women are often the sole or primary caregivers of young children; hence, concerns for their child's welfare in their absence create worry and anguish. Pregnant or breastfeeding women have particular problems related to their condition and should not be imprisoned except under exceptional circumstances.

81. Women are especially vulnerable to abuse from both staff and prisoners (when accommodated in the annex of a prison for male prisoners), especially to physical and sexual violence. Rape and other forms of sexual violence in detention settings, whether perpetrated by officials or co-prisoners with the acquiescence of officials, constitute torture.[77] In this context, the Special Rapporteur wishes to stress the plight and extreme vulnerability of transgender male-to-female persons who, in most circumstances, will be imprisoned in male detention facilities, even though they identify with the female gender, and recommends that States consider taking appropriate measures to avert further victimization of transgender persons in detention, as well as lesbian and gay prisoners.

82. The United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules)[78] constitute a comprehensive instrument for guiding States' policies on the issue and ensuring that the principle of non-discrimination, as embodied in rule 6 of the Standard Minimum Rules for the Treatment of Prisoners, is implemented in practice. Providing for such needs in order to achieve substantial gender equality shall not be regarded as discriminatory.

[74] See A/HRC/17/30 and Corr.1, paras. 20-26.

[75] Human Rights Committee, General Comment No. 20, paras. 2-3.

[76] United Nations Office on Drugs and Crime, "Cross-cutting issues: gender in the criminal justice system assessment tool", p. 31.

[77] See A/HRC/7/3.

[78] See General Assembly resolution 65/229.

IV. Conclusions

83. Pervasiveness and persistence of gender stereotypes continue, leading to discriminatory treatment of women in the criminal justice system. Judicial officers are not immune to such stereotypes. There is a strong need for studies designed to examine the integration, or lack thereof, of gender and women's perspectives into judging, judicial procedures and the judicial branch at large. Traditional notions of judging and judicial authority must be challenged and the representation of women in the judiciary encouraged. At the same time, men, also, have the opportunity to play a crucial role, whether as judges, prosecutors or lawyers, in making the criminal justice system more accessible to women, and therefore more equal.

84. Although the focus of this report is the criminal justice system, the Special Rapporteur wishes to underline that considerations of gender are also crucial in the context of the role of judges, prosecutors and lawyers in non-criminal law settings, such as those involving family, inheritance, property and land ownership, or in personal status law and jurisprudence.

85. The intersections between gender-based discrimination and other grounds for discrimination, and the consequences thereof, are too often overlooked.[79] Intersectional or multiple discriminations compound the challenge of ensuring women's equal representation in the judiciary and the legal profession, as well as their access to the criminal justice system.

86. The Special Rapporteur wishes to welcome the recent report of UN-Women entitled *Progress of the World's Women: In Pursuit of Justice*. The report bleakly acknowledges the fact that the infrastructures of justice (police, courts and the judiciary) are all failing women. The justice system, which reflects power balances, can be more effective in protecting women's rights.

87. Comprehensive reform, changes, policies and programmes need to be designed, implemented and monitored in all branches of the State to make justice work for women. The role of judges, prosecutors and lawyers is crucial. A gender perspective must inform their independence and impartiality. The integration of a gender perspective and the rights of women in the criminal justice system is one component of the solution needed to ensure that women are not ruled out of the rule of law.

88. Specialized attention for women in the justice system must begin from the moment they enter a police station to report a violation of their rights. Efficient and effective functioning of the system should encourage victims to readily report violent acts against them to the authorities and trust that the system will protect them effectively and provide them with remedy and redress.

V. Recommendations

89. **The following recommendations of the Special Rapporteur should be read in conjunction with the recommendations that she made in her last report to the Human Rights Council.**

[79] See, for instance, A/HRC/17/26.

General recommendations

90. **The Special Rapporteur encourages States to identify and share best practices and common standards in relation to the integration of a gender perspective and women's rights in all aspects of the criminal justice system.**

91. **States should conduct a mapping exercise focusing on their crim ial justice system so as to identify the occurrences and causes of gender-based discrimination and assess their impact on all aspects of women's involvement with and participation in the criminal justice system, whether as judicial actors, victims, witnesses or offenders.**

92. **States should encourage qualified women to occupy high-level positions within the judiciary and in the justice system in general, including by setting up temporary special measures.**

93. **States should take all measures available to combat gender-based stereotyping, bias and prejudices in all aspects of the criminal justice system, including investigation, prosecution, interrogation and protection of victims and witnesses, and sentencing, including by training judicial actors.**

Training and capacity-building

94. **Institutionalized training on gender equality and women's rights, including national, regional and international human rights law and jurisprudence, should be established by States and be made compulsory for judges, prosecutors, lawyers, public defenders and other judicial actors in the justice system, in particular the criminal justice system, so as to ensure consistent application of a gender perspective.**

95. **International human rights law, in particular regarding gender equality and women's rights, should be included in the curricula of all law faculties and law schools, and in the curricula of schools for the judiciary and the academic programmes of bar associations.**

96. **Gender expertise must be promoted, valued and integrated in all types of legal training and capacity-building for the judiciary and members of the legal profession.**

Women victims' participation in the criminal justice system

97. **States should establish specialized courts or units within courts or prosecutorial offices to deal with specific gender-based crimes so as to reduce women's challenges in and barriers to accessing justice. Such courts should be staffed with gender-sensitive judicial actors, highly trained on gender equality, non-discrimination and specific gender-based crimes.**

98. **The Special Rapporteur urges States to create mechanisms or bodies to record, monitor, assess and make available, court decisions that deal with women victims and/or gender-based crimes.**

99. **States should address the issue of legal costs and lack of legal aid programmes and its disproportionate impact on women's access to the criminal justice system, as well as on the access of specifically vulnerable groups.**

Witness and victim protection

100. **The Special Rapporteur urges States to consider developing effective and efficient formal witness protection measures and programmes that are consistent with the principles of the right to a fair trial and include a strong gender perspective. Such measures and programmes should form an integral part of the criminal justice sector strategy, should be comprehensive and should cover all types of crimes, including gender-based crimes and human rights violations. States should devote the required adequate financial resources to these measures and programmes.**

101. **Threats and risks should be adequately assessed by an independent authority and the subsequent protection of victims and witnesses should be tailored to their needs and should be available at all stages of trial, including the pretrial investigation phase.**

Women offenders

102. **The Special Rapporteur recommends that States adopt criminal law provisions that do not directly or indirectly discriminate on the grounds of gender during criminal proceedings. Sentencing should include a gender perspective and inhuman sentencing should be eliminated imperatively. The specific needs of women and transgender persons should be taken into account when sentences of detention are ordered.**

Role of associations in the legal profession

103. **Bar associations and associations of magistrates, whether national, regional or international, have a crucial role to play in the effective support of women's representation in the legal profession, and in the development of effective training for judges and lawyers on international human rights law standards. They should also support and encourage the sharing of best practices in applying gender-equality norms in criminal court procedures and jurisprudence.**

International community

104. **The international community should also offer constructive substantive and technical support to Member States for ensuring women's equal representation in the judiciary, as well as their equal participation, protection and treatment, whether as victims, witnesses or offenders, in the criminal justice system, including, for example, by helping to raise the issue of appointment and promotion of women judges through the domestic political processes as an essential requirement of women's right to equal participation in public life, working with women who are in the legal profession, and sharing good practices and decisions upholding the international standard of equality and non-discrimination.**